Author: R. Maxwell	*Start Date: 11/14/2018*	*Completion Date: 11/14/2018*	
Reviewer: *JKHarris 11/27/2018*			
Review Comments: *Clear documentation.*			

Purpose: Submit the discussion document for OIG Project No. OA&E-FY18-0177 to the agency for review.

Source: Editor-approved discussion document for OIG Project No. OA&E-FY18-0177. [Link: G.3.1 - Discussion Document to Editors]

Scope: Send the EPA the Editor-approved discussion document for OIG Project No**.** OA&E-FY18-0177

This was done in accordance with Assignment Guide G, step 4 which states "Issue Discussion Document to the Agency for review and comment."

Conclusion: On November 13, 2018, the OIG team emailed the discussion document for OIG Project No. OA&E-FY18-0177 to Michael Benton (Audit Follow-Up Coordinator, Office of the Administrator) and Bobbie Trent (Agency Follow-Up Coordinator).

Details:
On November 13, 2018, the OIG team emailed the discussion document for OIG Project No. OA&E-FY18-0177 to Michael Benton (Audit Follow-Up Coordinator, Office of the Administrator) and Bobbie Trent (Agency Follow-Up Coordinator). The agency was requested to provide comments to the discussion document within 15 days (i.e. by November 28, 2018).

ATTACHMENT 1: Discussion document transmittal email to EPA
[Link: G.4 - Discussion Document to EPA - Discussion Document to EPA.pdf]

ATTACHMENT 2: EO 13771 discussion document
[Link: G.4 - EO 13771 DiscussionDocument.docx]

Author: R. Maxwell	*Start Date: 10/15/2018*	*Completion Date: 10/16/2018*	
Reviewer: JKHarris 12/7/2018			
Review Comments:			

Purpose: Send questions to other federal agencies that are also implementing Executive Orders 13771 and 13777, to gain perspective of what is happening outside of the EPA.

Source: Self-initiated questions from the OIG team.

Scope: During our Go/No-Go Meeting the team decided to go into fieldwork with the intent on reaching out to other federal agencies to inquire about how they are implementing Executive Orders 13771 and 13777.

Conclusion: As of the date of this workpaper, we have not received a response from the U.S. Department of Interior. *Link:* ***G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx***

Details:

On Wednesday, September 12, 2018, Lauretta Joseph emailed the U.S. Department of Interior (DOI) questions about how they implement Executive Orders 13771 and 13777. We informed DOI, that "although our focus of our evaluation is on EPA; we wanted to gain the perspective of what is happening outside of EPA.

Our original communication was sent to DOI's Office of Budget. They informed us that they were forwarding our correspondence to DOI's Deputy Inspector General and OIG Chief of Staff. EPA OIG sent additional correspondence on Monday, October 1, 2018, but as of the date of this workpaper we have yet to receive a response to the questions listed below.

General Questions

1. Describe the process used by DOI to determine potential actions for deregulation and regulation under Executive Order 13771.
2. Is the process to determine actions for deregulation and regulation under Executive Order 13771 different from the process that was in place before E.O. 13771? If so, how?
3. Did your agency solicit suggestions for repeal and replacement from external stakeholders? If so, do you intend to repeat the process each year?
4. Does your agency/department have a Regulatory Reform Task Force? If so, what has been their role in implementing E.O. 13771?
5. How does your agency/department plan to track progress toward achieving the required

OMB performance indicators under E.O. 13777?

6. Did your agency/department develop any additional internal guidance related to Executive Order 13771 beyond what was developed by OMB?

After reviewing DOI's website, we did not find any information related to DOI's 90-day progress reports or RRTF meetings. However, DOI did not place a deadline on the receipt of comments for its external outreach efforts. As of the date of this workpaper, external stakeholders are still able to post comments online via the instructions under the "Addresses" section on the following webpage https://www.federalregister.gov/documents/2017/06/22/2017-13062/regulatory-reform.

Author: LAJ	*Start Date: 7/31/18*	*Completion Date: 7/31/18*	
Reviewer: JHHarris 8/31/2018			
Review Comments:			

Purpose: To review Office of Air and Research (OAR) actions related to Executive Order 13771.

Scope: **Preliminary Research**
Sources: Office of Air and Research
Participants: See Sign in sheets

Conclusion: **OAR agenda is determined as usual and then OP calculates the cost aspects. The task force did not meet with OAR.**

DETAILS:

Overall Meeting Objective: to obtain internal perspectives on EPA work related to Executive Order (EO) 13771 and EO 13777, particularly as it pertains to the selection of actions for deregulation and regulation. Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx

AA-ship: Assistant Administrator Leadership (Main EPA Program Offices)
OP: Office of Policy
OAR: Office of Air and Radiation
CAA: Clean Ari Act
EO: Executive Order
NCEE: National Center for Environmental Economics

GENERAL DISCUSSION QUESTIONS
EPA OIG meeting with Office of Air and Radiation

Thursday, July 26, 2018, 2:00 pm EDT
Location: TBD
If needed teleconference available: (b) (6)

Jeff gave the intro. He stated that we have met with one person in the Office of Policy and plan to meet with the task force. Currently, we are meeting with representatives from the AAships. This is our first meeting with an AA-ship. Jaya led the meeting.

1) Describe the process used to determine potential actions for deregulation and regulation. Did you solicit input from stakeholders?

(b) (5)

[redacted]

They did solicit input from stakeholders by way of the docket and held one conference call with stakeholders where they were allowed 3 minutes per person to voice their concerns/opinions/perspectives.

2) What internal guidance (if any) does your office use to help guide the process?

OAR did not develop any internal guidance-OP gave us some guidance and OMB.

3) Is the process to determine actions for deregulation and regulation under EO 13771 different from the process that was in place before EO 13771? If so, how?

(b) (5)

[redacted]

4) Is there a set number or cost of deregulatory and/or regulatory actions that your AA-ship must fulfil by the end of the fiscal year?

(b) (5) [redacted]

[redacted]

[redacted]

5) In FY17, how many actions did your office propose for deregulation and regulation? In FY18? How many of those proposed actions resulted in final deregulated actions or regulated actions? Link: F.9.6 - Stakeholder Outreach

Did not know off hand. Referred team to reginfo.gov website.

(b) (5) [redacted]

[redacted]

[redacted]

6) Has the Regulatory Reform Task Force met with your office regarding the implementation of EO 13771 or 13777? How often and what was requested?

(b) (5) [redacted]

[redacted]

7) How does your office work with other AA-ships regarding both EOs?

(b) (5) [redacted]

8) Describe the process used to determine the costs and benefits for proposed actions for deregulation.
    a. We understand that cost is a driving force of the deregulation/regulation process under Executive Order 13771– is there anything that allows for human health benefits to outweigh the cost factor?

(b) (5) [redacted]

There was a clear direction (from the administration) that they wanted us to look at opportunities for deregulatory actions.

    b. Has there been any pushback internally to weigh human health/environmental benefits over costs?

Josh asked whether we meant from his office, the administrator or elsewhere. Jaya clarified -internally

(b) (5) [redacted]

9) How does your office plan to track progress toward achieving the required OMB performance indicators under EO 13777?

(b) (5) [redacted]

10) Does your office have its own performance indicators related to deregulated and/or regulated actions under 13771 and/or 13777?
Not aware that we do.

Jaya asked if there were any additional questions:

Jeff asked about the April stakeholder meeting. Is there a place to look to see what additional ideas came forward out of the meeting?

Josh- I (b) (5) [redacted] They (administration) set their priorities and it is based on any number of factors.

Jeff asked if the stakeholder meeting were a one- time deal?
Josh- I do not know. The Office of Policy would know. Link: F.9.6 - Stakeholder Outreach

Lauretta whether an action for OAR can be introduced outside of OAR. Can OP add an action that OAR did not originally propose?

(b) (5) [redacted]

Jeff summarized his takeaway from the meeting today.

Josh agreed with Jeff's summary. (b) (5) [redacted]

Jeff reiterated that maybe (b) (5) [redacted].

Meeting ended.

Josh-Feel free to circle back…we (b) (5) [redacted]

Requested Documents

- Calculations/Spreadsheet for all OAR final deregulated and regulated actions completed to date under EO 13771
- Any internal guidance used for determining EO 13771 savings and costs
- Cost and Benefit analysis for all OAR final deregulated and regulated actions completed to date under EO 13771

Author note: We did not receive any documents from OAR. If we decide we need the documentation, we will reach out to OAR again.

Author: LAJ	*Start Date: 8/2/18*	*Completion Date: 8/2/18*	
Reviewer: JKHarris 8/31/2018			
Review Comments:			

Purpose: To review Office of Land and Emergency Management (OLEM) actions related to Executive Order 13771. *Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx*

Scope: **Preliminary Research**
Sources: OLEM
Participants: See Sign in sheets

Conclusion: **OLEM agenda is determined as usual and then OP calculates the cost aspects. The task force did not meet with OLEM.**

DETAILS:

GENERAL DISCUSSION QUESTIONS

EPA OIG meeting with Office of Land and Emergency Management

Tuesday, July 31, 2018, 3:00 pm EDT
Location: Teleconference
(b) (6)

Overall Meeting Objective: to obtain internal perspectives on EPA work related to Executive Order (EO) 13771 and EO 13777, particularly as it pertains to the selection of actions for deregulation and regulation.

Jeff gave the intro. It is about the implementation of the Executive Order. He stated that started with Office of Policy (OP) and will end with OP. Gave a brief background on how we do our work

1) Describe the process used to determine potential actions for deregulation and regulation. Did you solicit input from stakeholders?

OLEM- We are with the Reg Management group for OLEM. Policy Analysis and Regulatory management staff is the full name. We see all the rules that come through –

we implement the EO. 13777 and managed OLEMs portion of the public meetings. In regard to the docket, 600,000 plus comments where received…most ever received.

Jeff- Have you had other stakeholder meetings for this FY or was it a one- time thing?
OLEM-One time meeting-right now it was a one time meeting. Link: F.9.6 - Stakeholder Outreach

Describe your process.
(b) (5) [redacted]

2) What internal guidance (if any) does your office use to help guide the process?
After further clarification from Jeff regarding the question (b) (5) [redacted].

3) Is the process to determine actions for deregulation and regulation under EO 13771 different from the process that was in place before EO 13771? If so, how?
OLEM-We have been doing regulatory reform for years. This is just a new EO that defines it. OLEM discussed various reg reform changes they have been through in particular EO 13563- https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review

Lauretta asked whether this EO is different because cost is the the prevailing factor and whether cost was considering in other EOs.
(b) (5) [redacted]

4) Is there a set number or cost of deregulatory and/or regulatory actions that your AA-ship must fulfil by the end of the fiscal year?
Jeff expanded upon the question by asking were you given a target?
(b) (5) [redacted].
Link: F.9.1 - No Linkage

Jeff-How did you identify actions?

(b) (5)

Jeff- for the actions selected was there common ground?
(b) (5)
Jeff-And did that it matter programmatically?
OLEM (b) (5)

Jeff- For the matching two for one exercise. Have you been asked to do that again?
OLEM- (b) (5)

Lauretta asked whether OLEM calculates their own cost savings.
(b) (5)

Lauretta asked whether not including benefits is also different that before.
(b) (5)

5) In FY17, how many actions did your office propose for deregulation and regulation? In FY18? How many of those proposed actions resulted in final deregulated actions or regulated actions?

(b) (5)

6) Has the Regulatory Reform Task Force met with your office regarding the implementation of EO 13771 or 13777? How often and what was requested?

OLEM- No

(b) (5) [redacted]

7) How does your office work with other AA-ships regarding both EOs?

(b) (5) [redacted]

8) Describe the process used to determine the costs and benefits for proposed actions for deregulation.
    a. We understand that cost is a driving force of the deregulation/regulation process under Executive Order 13771– is there anything that allows for human health benefits to outweigh the cost factor?
    b. Has there been any pushback internally to weigh human health/environmental benefits over costs?

(b) (5) [redacted]

9) Under EO 13777, OMB requires agencies to include the following in their FY 2019 Annual Performance Plan:

- Number of evaluations to identify potential EO 13771 deregulatory actions that included opportunity for public input and/or peer review;
- Number of EO 13771 deregulatory actions recommended by the Regulatory Reform Task Force to the agency head, consistent with applicable law;
- Number of EO 13771 deregulatory actions issued that address recommendations by the Regulatory Reform Task Force;
- Number of EO 13771 regulatory actions and, separately, EO 13771 deregulatory actions issued; and
- Total incremental cost of all EO 13771 regulatory actions and EO 13771 deregulatory actions (including costs or cost savings carried over from previous fiscal years).

How does your office plan to track progress toward achieving the required OMB performance indicators under EO 13777?

OLEM-OP does all the tracking.

10) Does your office have its own performance indicators related to deregulated and/or regulated actions under 13771 and/or 13777?

OLEM- no

Jeff summarized the meeting- (b) (5) [redacted]

(b) (5) [redacted]

[redacted]

Jeff added that it seems the implications of it (EO 13771) (b) (5) [redacted]

[redacted]

Jeff asked if there were any improvements to suggest. Link: F.9.6 - Stakeholder Outreach

(b) (5) [redacted]

Requested Documents

- Calculations/Spreadsheet for all OLEM final deregulated and regulated actions completed to date under EO 13771
- Any internal guidance used for determining EO 13771 savings and costs
- Cost and Benefit analysis for all OLEM final deregulated and regulated actions completed to date under EO 13771

Author note- if needed we will obtain these documents from OP. If anything further is needed we can also reach out to OLEM.

Author: Jaya Brooks	*Start Date:* 10/04/2018	*Completion Date:* 10/04/2018	
Reviewer:			
Review Comments:			

Purpose: To document correspondence between OIG and OP on additional questions that we had after we met with NCEE and their implementation of EO 13771

Source: Source 1 - Email chain between OIG and OP/NCEE/ORPM

Scope: Interviews

Conclusion:

1) Through this discussion, we were told by ORPM that we can not compare past years to FY 17 and 18.

Author: R. Maxwell	*Start Date: 10/4/2018*	*Completion Date: 10/4/2018*	
Reviewer: LAJ, 10/11/18			
Review Comments: wp reviewed and approved. LAJ			

Purpose: Document (b) (5) William (Bill) Nickerson (Office of Policy, ORPM) follow-up question responses regarding the implementation of Executive Order (E.O.) 13771.

Source: Email sent by Bill Nickerson to the EPA OIG team on 10/2/2018.
See email with attachments below.
[Link: E.1.1.1 - OP_followupquestions Oct 2018.docx]

Scope: **Preliminary Research/Fieldwork**

Conclusions:

- The Office of Policy (OP) has no plan to develop guidance outside of the OMB guidance that was previously developed.
- An action is regulatory if it is a final regulatory action, is significant under E.O. 12866, and imposes costs. As action is deregulatory if it is a final action with costs less than zero.
- EPA's FY18 cost allowance is -$40 million annualized costs (i.e. cost savings). EPA's FY19 cost allowance is still under development.
- EPA had 3 regulatory actions and 10 deregulatory actions in FY18. For the complete list of FY18 actions click here [Link: F.1.2 - FY 2018 Final Actions List].
- EPA's regulatory efforts have been informed by the meetings and teleconferences that occurred in 2017, as well as the related public docket.
- OP chairs the Regulatory Steering Committee meetings and E.O. 13771 has been discussed there.
- Since the public meetings and teleconferences held in 2017, there continues to be ongoing input and conversation with regulated entities and our partners, through the Smart Sectors program and through rule specific meetings and consultation. (b) (5) [redacted]

- OP didn't provide feedback to the program offices on the 90-day reports prepared in accordance with E.O. 13777 because they were progress reports for the EPA Administrator.

OP is responsible for tracking the performance indicators outlined in OMB M-17-23. The target for the incremental cost of EPA's regulatory and deregulatory actions is the same as our annual regulatory budget.

- A memo from acting Administrator Wheeler on the Regulatory Reform Task Force (RRTF) was also included in Mr. Nickerson's response.
- The Associate Deputy Administrator will serve as the task force's chairman.
- The Associate Administrator for the Office of Policy will continue to serve as the RRO. In addition, the following members will serve on the RRTF: 1) Chief of Staff; 2) the General Counsel; 3) AA for Enforcement and Compliance Assurance; 4) AA for Air and Radiation; 5) AA for Chemical Safety and Pollution Prevention; 6) AA for Land and Emergency Management; 7) AA for Water.
- The task force will be supported by OP staff from the Office of Regulatory Policy and Management (ORPM) and the Smart Sectors Program.
- The RRTF will meet regularly to consider specific recommendations for regulatory reform and make decisions about whether to undertake particular reforms, which will be communicated to the appropriate program office for further consideration and development.

On 10/9/2018, Bill Nickerson sent the team an additional email informing the OIG that the FY 2019 regulatory budget is $50 million in annualized savings. [Link: E.1.1.1 - ORPM 50 Million Reg Budget.pdf]

Details:

The team is ending fieldwork and had additional questions for Bill Nickerson regarding the implementation of E.O. 13771 The team first interviewed Mr. Nickerson on May 21, 2018. That interview write-up is included here [Link: E.1.1 - SECTIONE_1.1_ORPMMeetingQuestions_reviewed.docx].

The following responses were provided by Bill Nickerson on October 4, 2018.

1) **Does OP have plans to develop their own guidance for implementation of Executive Order 13771 outside of the OMB guidance that has been provided?** Link: G.9 - Cover Page & AAG Link: G.9.2 - Chapter 2-Results & Recommendations

[Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx] We have no plans to develop guidance. *[Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx]* No, OMB already issued comprehensive guidance in April 2017 on implementation of EO 13771. OMB has established a new module in ROCIS to collect 13771 information as part of the agency's Regulatory Agenda submission, and OP has provided spreadsheets to the program offices to facilitate the calculation of 13771 costs and savings that is consistent with OMB direction.

2) **AA-ships that we spoke with stated that the Office of Policy makes the final decision on what actions ultimately fall under Executive Order 13771.**
   a. **Please describe the decision process used to determine what falls under Executive Order 13771.**
   b. **Is there any guidance that is used to help make these determinations?**
   c. **Since AA-ships are only responsible for identifying deregulatory/regulatory actions and then providing those various actions to Office of Policy. What process does the Office of Policy have in place to collect and analyze this information?**

EO 13771 applicability is determined by the OMB guidance. *Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx* An action is regulatory if it is a final regulatory action, is significant under EO 12866, and imposes costs. An action is deregulatory if it is a final action with costs less than zero. The EO 13771 status of an action is part of the information collected to develop the semi-annual Regulatory Agenda.

3) **Please provide EPA's Executive Order 13771 cost caps for FY 2018 and FY 2019?**

EPA's FY18 cost allowance is -$40 million annualized cost (i.e., a savings). EPA's FY 19 cost allowance is still under development.

4) **Please provide the final number of deregulatory and regulatory actions taken under Executive Order 13771 for FY18? What was the cost/cost savings for each action?**

EPA had 3 regulatory and 10 deregulatory actions in FY18. Please see attached for the 13771 cost/savings associated with each action. *Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx*

5) **Did the Office of Policy go through the docket of comments that were received when the program offices solicited input from stakeholders? Was the information in the docket of comments used to make decisions on subsequent deregulatory and regulatory actions?**

EPA's regulatory reform efforts have been informed by the meetings and teleconferences that occurred in 2017, as well as the related public docket. Our regulatory reform efforts have also been informed by Executive Orders and ongoing input and conversations with regulated entities and our partners. (b) (5) [redacted]

(b) (5) [redacted]

6) **Does your office meet and work with the regulatory steering committee as it relates to Executive Order 13771?**

OP chairs the Regulatory Steering Committee meetings and 13771 has been discussed there. Most of the work related to 13771 is conducted as part of the development of the Regulatory Agenda, which the RSC is also very involved with.

7) **Program offices that we spoke with stated that there has been no mention of repeating the process for soliciting input from stakeholders for regulatory or deregulatory actions for Executive Order 13771. Has there been any consideration to repeat the stakeholder input process in the future? If not, why?**

EO 13777 directed agencies to seek input from entities significantly affected by regulations about the repeal, replacement, or modification of existing regulations. (b) (5) [redacted].

8) **Program offices that we spoke with stated that they did not receive any feedback on the information that they provided to the Office of Policy for the required 90- day report for Executive Order 13777. Why was there no follow-up?**

The 90 day report prepared in accordance with EO 13777 was a progress report for the EPA Administrator.

9) **We have heard from the AA-ships that we spoke with that they are not responsible for tracking performance indicators as outlined in OMB M-17-23.**

   a. What EPA office is responsible for tracking performance indicators?

   b. As required by OMB what the EPA's performance goals/targets associated with the indicators?

   c. What EPA office is responsible for setting and tracking the goals/targets associated with the performance indicators outlined in OMB M-17-23?

OP is responsible for tracking the performance indicators outlined in OMB M-17-23. Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx The target for the incremental cost of EPA's regulatory and deregulatory actions is the same as our annual regulatory budget. The regulatory

budget for FY18 was $40 million in annualized savings, and the regulatory budget for FY19 is still being finalized.

10) Has the Acting Administrator determined a schedule for future Regulatory Reform Task Force meetings and report or made any plans to replace members who have left the agency/task force?

The Acting Administrator sent a memo to the AAs about the RRTF in late August. That memo is attached and talks about the membership and process for the RRTF in the future.

Attachment:
See Email from Bill Nickerson here [Link: E.1.1.1 - Questionnaire Email with Bill Nickerson.pdf] Additional documents imbedded in the email include 1) Signed memo from the acting Administrator regarding the future of the Regulatory Reform Task Force and 2) FY 2018 E.O. 13771 accounting spreadsheet.

Author: R. Maxwell	*Start Date: 10/9/2018*	*Completion Date: 10/9/2018*	
Reviewer: LAJ, 10/11/18			
Review Comments: wp reviewed and approved. LAJ			

Purpose: Document (b) (5) the National Center for Environmental Economics (NCEE) responses to follow-up questions regarding its role in the implementation of Executive Order (E.O.) 13771.

Source: Email sent by Cynthia Morgan to the EPA OIG team on 10/2/2018.
See email with attachments below.
[Link: E.1.2.2 - Questionnaire Email with NCEE.pdf]

NCEE E.O. 13771 Workbook
[Link: E.1.2.2 - EO 13771 Workbook (2018).xlsx]

Scope: Preliminary Research/Fieldwork

Conclusion: NCEE developed a spreadsheet after discussions with OMB to confirm that the way costs and cost savings estimates were calculated are consistent with their accounting standards. In the latest version of the spreadsheet, a new tab was designed to collect data for E.O. 13771 entries into OMB's database. Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx The database information is automatically populated from information entered on the "Cost Calculation" sheet. This tab was added to help EPA staff responsible for transmitting the information to OMB.
PM Note: (b) (5) [redacted]

Details:

The team is ending fieldwork and had additional questions for NCEE regarding its role the implementation of E.O. 13771 The team first interviewed Mr. Al McGartland, Director of NCEE on July 10, 2018. That interview write-up is included here [Link: E.1.2 - NCEE Interview 7-10-18 Final_reviewed.docx].

On September 27, 2018, Lauretta Joseph emailed NCEE the following questions. Its responses are included below each question.

1. **During our last meeting with your team, it was discussed that NCEE has a spreadsheet that they use to collect and analyze the cost data for Executive Order 13771. Was this spreadsheet something that was developed in house by NCEE or was it a template that was provided from OMB?**

   NCEE: The spreadsheet was developed in house by NCEE, but it was done after discussions with OMB to confirm that the way costs and cost savings estimates are calculated is consistent with their accounting standards.[Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx] OMB provided guidance on the analytical assumptions to use when calculating regulatory costs and cost savings and NCEE had several discussions with OMB to ensure that the spreadsheet followed this guidance. Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx

   Since our meeting on July 10, 2018, we have made some updates to the spreadsheet. The latest version is attached. The most significant change is a new tab designed to collect data for EO 13771 entries into OMB's ROCIS (The RISC and OIRA Consolidated Information System) database. The ROCIS information is automatically populated from information entered on the "Cost Calculation" sheet. Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx We added this tab to help EPA staff responsible for transmitting the information to OMB. Link: Chapter 1 Indexing.docx There are also some minor changes on the "Cost Calculation" sheet, such as highlighting the correct annualized costs or cost savings estimate that program offices should use when reporting their results. Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx

2. **Additionally, in our previous meeting it was stated that initially there were problems/ errors in the data that was provided from AA-ships to NCEE. NCEE discovered these problems and developed corrections. Could you provide examples of some of the original problems/errors that your team encountered and what the subsequent fix was. At least two examples would be sufficient.**

   NCEE: Two examples come to mind.(b) (5)

(b) (5)

[redacted]

3. **Are there any additional challenges or barriers to your work on Executive Order 13771 that you would like to share?**

NCEE: (b) (5)

[redacted]

(b) (5)

[redacted]

NCEE's E.O. 13771 Workbook is included in the Source section. Instructions for inputting the information into the workbook can be found on the "Read Me" tab.

Author: R. Maxwell	*Start Date: 9/19/2018*	*Completion Date: 9/20/2018*	
Reviewer: LAJ, 9/27/18			
Review Comments: wp reviewed and approved.			

Purpose: Send questions to other federal agencies that are also implementing Executive Orders 13771 and 13777, to gain perspective of what is happening outside of the EPA. *Link:* ***G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx***

Source: Self-initiated questions from the OIG team.

Scope: During our Go/No-Go Meeting the team decided to go into fieldwork with the intent on reaching out to other federal agencies to inquire about how they are implementing Executive Orders 13771 and 13777.

Conclusion: According to the U.S. Department of Health and Human Services, they are/have implemented Executive Orders 13771 and 13777. HHS also formed its own Regulatory Reform Task Force and staff sought input from external stakeholders, per 13777. HHS stated that it tracks OMB performance indicators and follows OMB guidance M-17-21 and M-17-23. None of these statements were verified by EPA-OIG.

Details:
On Wednesday, September 12, 2018, Lauretta Joseph emailed the U.S. Department of Health and Human Services (HHS) questions about how they implement Executive Orders 13771 and 13777. We informed HHS, that "although our focus of our evaluation is on EPA; we wanted to gain the perspective of what is happening outside of EPA.

The questions sent to HHS are below and their responses are in red. A complete transcript of the email correspondence between EPA-OIG and HHS can be seen in the attachment below.

General Questions

1. Describe the process used by HHS to determine potential actions for deregulation and regulation under Executive Order 13771. Our process for determining deregulation is as specified in EO 13777 which we have married with our Unified Agenda development process that includes 13771 review.

2. Is the process to determine actions for deregulation and regulation under Executive Order

13771 different from the process that was in place before E.O. 13771? If so, how? Yes, as directed in EO 13771, EO 13777 and M-17-21.

3. Did your agency solicit suggestions for repeal and replacement from external stakeholders? If so, do you intend to repeat the process each year? Yes, as directed in EO 13777 each of the Operating Divisions and Staff Divisions sought input from external stakeholders.

4. Does your agency/department have a Regulatory Reform Task Force? If so, what has been their role in implementing E.O. 13771? Yes and we implement the Task Force as outlined in EO 13777, M-17-23 and M-17-21.

5. How does your agency/department plan to track progress toward achieving the required OMB performance indicators under E.O. 13777? Yes we track the performance indicators outlined in M-17-23.

6. Did your agency/department develop any additional internal guidance related to Executive Order 13771 beyond what was developed by OMB? No not outside of the guidance that OMB has shared with the 13771 data call for the Unified Agenda.

Attachment:
Email correspondence between EPA-OIG & HHS
[ADD LINK]

Author: R. Maxwell (assistance provided by J. Brooks for questions 9 & 10)	*Start Date: 7/24/2018*	*Completion Date: 7/26/2018*	
Reviewer: LAJ, 8/7/18			
Review Comments: wp reviewed and approved; PM edits in orange. LAJ			

Purpose: Interview Al McGartland, Director of the National Center for Environmental Economics (NCEE) to determine the role he and his office plays in implementing Executive Order 13771.

Source: Interview with EPA OIG and NCEE staff.
Tuesday, July 10, 2018 at 10:30am EDT via VTC and teleconference
See sign-in sheet for the complete list of attendees.
Link: E.1.2 - NCEE Sign-In Sheet 7-10-18.pdf

Scope: Preliminary research.

Conclusion: The National Center for Environmental Economics' involvement with Executive Order 13771 is limited to performing calculations for actions that are expected to go final. Their analysis is based on guidance provided by OMB. (b) (5) [redacted] *Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx*

Details:
Lauretta Joseph started off the meeting with a brief background on our team, what the OIG does and what our intentions are. (b) (5) [redacted] She stated that our goal is to provide recommendations that will help EPA in the long run. Ms. Joseph explained that we understand that deregulation is always happening but we want to understand how the process has changed under Executive Order 13771. Jeff Harris explained that from the Inspector General's perspective this audit is apolitical. We are only looking at what are the controls in place to make sure that things are done consistently, efficiently and in accordance with guidance.

GENERAL DISCUSSION QUESTIONS
EPA OIG meeting with National Center for Environmental Economics

Overall Meeting Objective: to obtain external perspectives on EPA work related to Executive Order 13771, particularly as it pertains to legal issues and stakeholder engagement

1. What role does your office have in assisting the agency with implementing Executive Order 13771? Does your role differ regarding deregulated actions and new regulatory actions? NCEE is also in the Office of Policy. Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx NCEE became involved because there was a need to assist with the economics and making sure that all the numbers were consistently calculated. Largely, NCEE's role is taking all the costs, putting them in a consistent framework. Link: (b) (5) [redacted] NCEE already has the job of looking at the economic impact analysis/cost-benefit analysis of all the significant rules under Executive Order 12866. In addition to making sure the cost savings are properly calculated NCEE makes sure the numbers are consistent with their economic guidelines so that things are consistent across the agency.

2. We know that deregulation has always occurred at EPA. Can you detail what is different with deregulation under E.O. 13771? What guidance did EPA use to deregulate actions and add new regulations before E.O. 13771 was developed? Deregulation has always occurred. OMB made a decision that any small action could count as deregulation. There is a lot of deregulatory actions that NCEE does not see because there are no numbers involved. NCEE's primary role deals with the regulatory budget that was set under Executive Order 13771. (b) (5) [redacted]

   Additional Question (L. Joseph): Who determines that something does not have cost savings? The economists are responsible for determining if something is costly, cost savings or zero-cost regulation. It largely has to do with the baseline, what would happen in the absence of what we are about to do (b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted]

3. (b) (5) [redacted]

   a. Any guidance that EPA uses to implement E.O 13771.; specifically, internal guidance used to determine calculations? OMB Guidance was used to create a spreadsheet to help the program offices provide information needed by NCEE. Initially we referred to the Q's & A's published by OMB until the end of 2017 when they released their accounting guidance. (b) (5) [redacted] Spreadsheets were meant to provide program offices with strict consistency. There is a "forced consistency," we recalculated and went through everything that had numbers. OMB was specific about using the GDP deflator for the inflation index.

   (b) (5) [redacted]

(b) (5) [redacted]

Additional Question (L. Joseph): Are these new concepts or have annualized and present value always been used when previously doing regulation/deregulation? The techniques are not new. We have calculated annualized and present values in almost every major regulation. (b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted]

4. What internal guidance was provided to AA-ships and Regions to help them determine cost savings related to EO 13771 actions? OMB first provided Q & A sheets to address very specific problems until their official guidance was completed. See response to question 3a.

5. We were provided the final calculation spreadsheet for some of the FY 2017 and FY 2018 actions under E.O.13771. Could you please let us know what assumptions were made for your calculations? Assumptions used include: a) 2016 dollars discounted back to 2016, b) infinite time frame, c) 7 percent discount rate, d) end-of-year discounting.

6. In the 2017-2018 Year in Review report, The Administrator is quoted as saying "In year one, EPA finalized 22 deregulatory actions, saving Americans more than $1 billion in regulatory costs" …; (b) (5) [redacted]

7. Was a cost-benefit analysis considered/done for each action that was considered? How were human and environmental impacts considered? Any analysis involving economics includes a cost-benefit analysis. (b) (5) [redacted]

   [Analyst Note: Information on Glider Kits can be found here. The Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits was a deregulatory action under Executive Order 13771 from EPA's OAR.]

   This is only a cost exercise under Executive Order 13771. (b) (5) [redacted]

   Additional Question (J. Brooks): Do you have criteria in place for cost-benefit analysis? Executive Order 12866 sets a standard. If the economic impact is $100 million a cost-benefit must be done. An economic analysis may also be completed if an action is deemed significant for other reasons by OMB. For instance, any absolute guideline issued by the Office of Water. (b) (5) [redacted]

8. Does E.O. 13777 influence any of your work and/or decisions made regarding E.O. 13771? (b) (5) [redacted] Others are responsible for making decisions and NCEE only does numbers.

   Additional Question (L. Joseph): Are they making decisions regarding which costs you are going to calculate? Because they are the ones narrowing done the rules which will need their costs determined. Any costs or cost savings have to be included regardless of decisions being made on what actions to take. OMB

says that you have to count them all. Unless OMB classifies it as de minimis, we have never been told to take something off the ledger. We only look at things that go final and things that are expected to go final. There have been instances where costs have been larger than expected due to requests made in court.

(b) (5) [redacted]

9. Did your work require any collaboration with the Science Advisory Board's (SAB) Environmental Economics Advisory Committee (EEAC)? If so, how does SAB's retirement of EEAC affect your office and/or workload? (b) (5) [redacted]

   Additional Question (J. Harris): Has that ever been done in the past? Last year, EEAC did review the value of statistical life. This year, economic guidelines are almost always reviewed by the SAB. We use a binder approach so that the whole thing does not need to get reviewed.

(b) (5) [redacted]

10. Are there any other Offices (or Agencies) that you believe we should contact regarding how Executive Order 13771 is being implemented within EPA? The team mentioned to meet with the AAships.

Requested Documents

Calculations/ Spreadsheet for all final actions completed to date under E.O. 13771
Any internal guidance used for determining E.O. 13771 savings and costs.

The document received by the team is attached here.
[Link: E.1.2 - costs_and_cost_savings.pdf]

Team also reached out to NCEE via email after the meeting to gain documentation on FY2017 final actions and also determine how to retrieve data for years prior to the E.O. This information will be documented in a separate WP.

Author: R. Maxwell	*Start Date: 12/13/2018*	*Completion Date: 12/13/2018*	
Reviewer: JKHarris 12/14/18			
Review Comments: (b) (5) [redacted] .			

Purpose: Outline the selection criteria used to select the other federal agencies we contacted regarding their implementation of Executive Orders 13771 and 13777.

Source: 1) Self-initiated research
2) Regulatory Reform: Two-for-One Status Report and Regulatory Cost Caps [Link: F.1.1 - FINAL_TOPLINE_All_20171207.pdf]

Scope: During our Go/No-Go Meeting the team decided to go into fieldwork with the intent on reaching out to other federal agencies to inquire about how they are implementing Executive Orders 13771 and 13777. [Link: A.16 - R-Go/No-Go Meeting]

Ryan Maxwell was tasked by her Project Manager to identify other federal agencies to interview regarding their implementation of Executive Orders 13771 and 13771. This workpaper outlines the information she shared with her PM and the agencies selected.

Conclusion: We decided to reach out to the following federal agencies:
U.S. Department of Health and Human Services (HHS)
U.S. Department of Interior (DOI)
U.S. Department of Agriculture (USDA)

Details:
During the Go/No-Go Meeting the team decided to reach out to other federal agencies to inquire about how they are implementing Executive Orders 13771 and 13777. Ryan Maxwell was tasked with evaluating publicly available information to determine which agencies our team could reach out to. In an email to her Project Manager, Ms. Maxwell cited primarily using the Regulatory Reform: Two-for-One Status Report and Regulatory Cost Caps table (OIRA summary document) to make the following suggestions. Ms. Maxwell stated only focusing on federal departments and agencies with at least five deregulatory actions in FY 2017.

In order of preference, Ms. Maxwell made the following suggestions:

1. Department of Interior

a. The only other federal department/agencies with double-digit (12) deregulatory actions for FY 2017.
b. According to the table, DOI saved $1.15 billion in regulatory costs, or $80.5 million per year.
c. They have the largest FY 2018 annualized costs cap at $196 million.
d. The RRO is (b) (6) .
e. https://www.doi.gov/regulatory-reform/implement

2. Department of Health and Human Services
   a. There were only three regulatory actions last year (EPA, DOE and HHS). HHS and EPA were the only two of the three departments/agencies identified that was compliant with E.O. 13771's 2-for-1 rule. *Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx* Also, the Department of Energy may have additional actions being captured under E.O. 13783, Promoting Energy Independence and Economic Growth, that may complicate/duplicate the information we are trying to collect.
   b. With its 7-to-1 ratio, HHS had a relatively low savings $5.3 million in regulatory costs, or $400 thousand per year.
   c. According to a July 23, 2018 (see link below), it appears that there are ongoing efforts to seek feedback from stakeholders.
   d. The RRO is (b) (6) .
   e. https://www.ihs.gov/newsroom/includes/themes/responsive2017/display_objects/documents/2018_Letters/DTLL_DUIOLL_07232018.pdf
   f. https://www.ihs.gov/newsroom/includes/themes/responsive2017/display_objects/documents/2018_Letters/Enclosure_DTLL-DUIOLL_07232018.pdf

3. Department of Agriculture
   a. (b) (5)
   b. According to the table, DOA saved $183.6 million in regulatory costs, or $12.9 million per year.
   c. The RRO is (b) (6) .
   d. I couldn't find any additional information online regarding USDA's efforts under E.O. 13777.
   e. According to the document at the link listed below, USDA's RRTF did not issue the 90-day progress report by the May 2017 deadline. *Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx*
   f. https://argive.org/executive-order-13777

Ms. Maxwell was then asked to look into (b) (5) Ms. Maxwell gave the following summary:

1. (b) (5)

(b) (5) [redacted]

2. (b) (5) [redacted]

3. (b) (5) [redacted]

It was ultimately decided by the Project Manager to interview representatives from HHS, DOI and USDA. Workpapers documenting the communication between EPA OIG and these federal agencies are linked below.

HHS [Link: E.2.3 - R-HHS Questionnaire]

DOI [Link: E.2.7 - DOI Questionnaire]

USDA [Link: E.2.5 - USDA Questionnaire]

ATTACHMENT 1: Email to Project Manager with research results
[Link: E.2.8 - Other Fed Agencies Criteria.pdf]

Author: R. Maxwell	*Start Date: 8/7/2018*	*Completion Date: 8/7/2018*	
Reviewer: LAJ, 8/30/18			
Review Comments: wp reviewed and approved. LAJ			

Purpose: Obtain internal perspectives from the Office of Water (OW) on EPA work related to Executive Orders 13771 and 13777, particularly as it pertains to the selection of actions for deregulation and regulation. *Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx*

Source: Interview with EPA OIG and OW staff.
Wednesday, August 7, 2018 at 2:00pm EDT
See sign-in sheet for the complete list of attendees.
[Link: E.1.3 - OW Sign-In Sheet 8-1-18.pdf]

Scope: Preliminary research.

Conclusion: The Office of Water stated that much did not change under E.O. 13771. The Office of Policy (OP) has centralized implementation of the E.O. OW also reported having not received any feedback to the May 15th deliverable submitted to the Administrator and the Office of Policy. (b) (5) [redacted]

Details:
Jeff Harris started off the meeting with a brief background on our team, what the OIG does and what our intentions are. Mr. Harris explained that this is not an evaluation on OW we are just looking at the internal controls driving the execution of E.O. 13771. He also explained that we are trying to get some perspective from each of the media AAship and how they are supporting efforts under E.O. 13771. OW had more specific questions regarding the deliverables expected from our review. Mr. Harris responded by summarizing our reporting process and by also informing OW that our report would likely (b) (5) [redacted].

GENERAL DISCUSSION QUESTIONS
EPA OIG meeting with Office of Water

Overall Meeting Objective: to obtain internal perspectives on EPA work related to Executive Order (EO) 13771 and EO 13777, particularly as it pertains to the selection of actions for deregulation and regulation.

1) Describe the process used to determine potential actions for deregulation and regulation. Did you solicit input from stakeholders? We posted information on the OP managed website to advertise our stakeholder webinar. They showed Jeff Harris a copy of their May 15th summary from their meetings with external stakeholders. Stakeholders were allowed to call in on the phone, however they were limited by the number of people that could call in. Others were encouraged to submit comments electronically via the webinar. The information and recommendations received from these outreach efforts were summarized and submitted to Office of Policy (OP) which in turn was submitted to their docket.

2) What internal guidance (if any) does your office use to help guide the process?
(b) (5) [redacted]

   R. Maxwell Question: Are you referring to the May 15th document that was submitted to OP? Yes

   L. Joseph Question: Does that document only capture FY 2017 efforts or did you repeat these actions in FY 2018? Just FY 2017. We don't have any plans to repeat those actions in FY 2018 and we have not received any direction from OP to do so. Link: F.9.6 - Stakeholder Outreach

3) Is the process to determine actions for deregulation and regulation under EO 13771 different from the process that was in place before EO 13771? If so, how?
(b) (5) [redacted]

L. Joseph Question: In regard to the reg agenda, is that typically being used to put up the actions that you want for deregulation or regulation? In regard to 13771, is everything the same? Or is it the fact that you are focusing on costs that makes it different? Are there any differences that you have to include with your reg agenda that you didn't have to include before? No, we have to specify if actions are regulatory or deregulatory. That is not a field that we previously had to fill out. We also have to do cost sheets for significant regulatory actions we didn't have to do those before the E.O. We did cost-benefit analysis but we never had to fill out an actual sheet. OP has centralized implementation of the E.O.

L. Joseph Questions: Are you performing the cost-benefit analysis in house or are you just filling out a form for OP? We have economists who do that in house or we contract out. OP also has NCEE who also serve as members of the workgroups who compute the cost-benefit analyses. NCEE has actually taken the lead with WOTUS. Does the cost-benefit analysis feed into cost savings for 13771? OP manages all the cost accounting. They centralize all the calculations and determine whether it's a net cost or net savings.
Link: F.9.1 - No Linkage

J. Harris: Name of person we should follow up with? (b) (5) [redacted]

4) Is there a set number or cost of deregulatory and/or regulatory actions that your AA-ship must fulfil by the end of the fiscal year? No

5) In FY17, how many actions did your office propose for deregulation and regulation? In FY18? How many of those proposed actions resulted in final deregulated actions or regulated actions? (b) (5) [redacted]. OP is the final arbiter of actions.

L. Joseph Comment: We are trying to understand the process better. We want to know what was proposed by the program offices and compare to the final list of deregulatory/regulatory actions? (b) (5) [redacted]

6) Has the Regulatory Reform Task Force met with your office regarding the implementation of EO 13771 or 13777? How often and what was requested? (b) (5) [redacted]

7) How does your office work with other AA-ships regarding both EOs? The most interaction comes with other AAships is through the Regulatory Steering

Committee. (b) (5) [redacted]

L. Joseph Comment: When it comes to OP are you the main person of contact? The people that OP suggested we talk to have all recommended the Steering Committee. We are wondering why OP has selected you versus the steering committee members. (b) (5) [redacted]

8) Describe the process used to determine the costs and benefits for proposed actions for deregulation.
   a. We understand that cost is a driving force of the deregulation/regulation process under Executive Order 13771– (b) (5) [redacted]
   b. (b) (5) [redacted]

      J. Harris Comment: The E.O. is clear in terms of it's priorities. Do you know of anything that has been done by the agency to make a case for a more holistic evaluation? Nothing comes to mind in terms of 13771. (b) (5) [redacted]

9) Under EO 13777, OMB requires agencies to include the following in their FY 2019 Annual Performance Plan:

   - Number of evaluations to identify potential EO 13771 deregulatory actions that included opportunity for public input and/or peer review;
   - Number of EO 13771 deregulatory actions recommended by the Regulatory Reform Task Force to the agency head, consistent with applicable law;
   - Number of EO 13771 deregulatory actions issued that address recommendations by the Regulatory Reform Task Force;
   - Number of EO 13771 regulatory actions and, separately, EO 13771 deregulatory actions issued; and

- Total incremental cost of all EO 13771 regulatory actions and EO 13771 deregulatory actions (including costs or cost savings carried over from previous fiscal years).

How does your office plan to track progress toward achieving the required OMB performance indicators under EO 13777? I think OP tracks it all.(b) (5) [redacted]

10) Does your office have its own performance indicators related to deregulated and/or regulated actions under 13771 and/or 13777? We do track stats of regulated actions. Regulatory actions and all EPA program actions are tracked to make sure we are making progress. Regs is one of the items that are tracked monthly.(b) (5) [redacted] None of this stuff was done in response to the E.O.

L. Joseph Question: Does OW not see the list of recommendations again after they are sent to OP? We were talking about the May 15th reports. We never heard anything in response to that report. Link: F.9.6 - Stakeholder Outreach

J. Harris Question: Referencing a sheet he found online titled, Annuitized & Present Value Costs and Costs Savings for E.O. 13771 for FY 2017. One of the items is the definition of WOTUS and addition of an applicability date for the 2015 Clean Water Rule. Classified as deregulatory and other costs not quantified. Would that listing surprise you? Or does it make any sense that its listed so it doesn't seem to be contributing cost savings one way or the other?(b) (5) [redacted]

(b) (5) [redacted]

[redacted].

PM note: After the meeting, OW sent additional written responses.

Author: Jaya Brooks	*Start Date:* 09/27/2018	*Completion Date:* 09/27/2018	*10/17/18 JBB* (b) (5) [redacted]
Reviewer: *LAJ, 9/27/18*			
Review Comments: *wp reviewed and approved.*			

Purpose: To document the U.S. Department of Agriculture's responses to our questions about the implementation of 13771 and 13777

Source: Source 1 – (b) (5) [redacted] email correspondence between EPA OIG and USDA
Source 2 – (b) (5) [redacted] Regulatory Reform Task Force meetings

Scope: Interviews

Conclusion:

1) USDA has 4 ways in which they determine potential actions for deregulation and regulations that fall under 13771 – public comment, the Regulatory Reform Taskforce, legislative reauthorizations, or section 610 of the Regulatory Flexibility Act. See detail #1 for further information.
2) USDA introduced 2 changes to the deregulation/regulation process under 13771. USDA reviews workplans on a weekly basis as they are tied to the spring and fall regulatory agenda to allow the RRO to get a full picture. They also created a RRO Summary Coversheet required to accompany each workplan through the review and clearance process (See form on page #5). The coversheet includes a proposed Executive Order 13771 designation and the estimated costs or savings, and is intended to facilitate an 'apples to apples' comparison among the various workplans. See detail #2 for further information. Link: G.9.2 - Chapter 2 Indexing.docx
3) USDA has a Regulatory Reform Task Force in place that solicits input from various entities. See detail #4 for further information.
4) USDA uses guidance and materials provided by OIRA to track progress. See detail #5.
5) Per Source 2, the USDA Regulatory Reform Task Force continued to meet after initial implementation of 13771.

Details:

EPA OIG request for information from USDA OBPA

USDA Response to General Questions Received September 12, 2018.

1. Describe the process used by USDA to determine potential actions for deregulation and regulation under Executive Order 13771.

USDA Response: Potential actions for deregulation and regulation under Executive Order 13771 may come forward through public comment, the Department's Regulatory Reform Taskforce, legislative reauthorizations, or section 610 of the Regulatory Flexibility Act. Regardless of the means for identifying potential regulatory and deregulatory actions, each contemplated action follows a rigorous development process consistent with the requirements in section 6 of Executive Order 12866, described below as the Department's regulatory workplan process.

Public Comment - The Department published a Request for Information (RFI) in the Federal Register on July 17, 2017 seeking public input on carrying out the mandates of Executive Order 13771. The comment period remained open for a full year and was extended to July 17, 2019 with a subsequent Federal Register publication on June 20, 2018. As of September 12, 2018 more than 4,000 public comments have been received.

The Regulatory Reform Taskforce -(b) (6) convened the first meeting of USDA's Regulatory Reform Taskforce on May 31, 2017. USDA's Regulatory Reform Taskforce represents mission areas and staff offices across the department that lead regulatory and policy assessments, identify existing regulations, orders, guidance documents and policies, solicit additional input, and make recommendations for reform opportunities. The meeting agendas for the Regulatory Reform Taskforce are available online at https://www.usda.gov/our-agency/about-usda/regulatory-reform.
[Link: G.9.2 - Chapter 2 Indexing.docx]

Legislative Reauthorizations - USDA uses the legislative cycle for major program reauthorizations, which occur approximately every 5 to 7 years, as an opportunity to both identify needed statutory revisions and to review the implementation of its regulations.

Regulatory Flexibility Act - USDA's review of existing regulations follows section 610 of the Regulatory Flexibility Act, whereby rules that may have a substantial impact on small entities were reviewed within 10 years of publication of the final rule. If a Section 610 review reveals that a regulation is in need of revision or rescission, the agency initiates a rulemaking action.

Section 6 of Executive Order 12866 requires each agency to provide the Administrator of the Office and Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) with a list of its planned regulatory actions for a designation of significance under the Executive Order. USDA complies with this requirement by submitting regulatory workplans to OIRA.

The Regulatory Workplan Process - To inform whether a rulemaking should be undertaken or not, mission areas and agencies are required to seek input from Departmental scientists, subject matter experts, economists, and attorneys to ensure regulatory workplans are well justified and analyzed. For actions of potential significant policy, economic or legal concern, mission

areas/agencies should seek assistance *in advance* from USDA's Office of General Counsel and the Office of the Chief Economist, and, if applicable, other impacted mission areas and agencies. Workplans must be sufficiently developed and analyzed befor the Office of the Secretary can develop a total regulatory cost allowance for USDA. Agencies must evaluate workload to determine what is feasible to complete during the timeframes projected for completion.

Prior to submitting a workplan to Office of Budget and Program Analysis (OBPA) for consideration by the Mission Area and the Office of the Secretary, agencies are required to obtain clearance by the Office of General Counsel. After review by OBPA, workplan packages are reviewed by the Office of the Secretary *en masse* during the timeframes identified below to provide a complete picture of candidates for inclusion in the upcoming regulatory agenda and to develop a total regulatory cost allowance for the Department. Only workplans approved by the Office of the Secretary will be submitted to OIRA for designation and approved as candidates for inclusion in the upcoming agenda.

Regulatory agenda data calls typically come from OIRA in late February and late July of each year. To align the development and clearance of workplans with the process for determining the Department's biannual regulatory agenda and related regulatory budget, the submission of workplan packages to the OBPA is generally limited to the following one-week timeframes: (1) The third week in November and the third week in January for the February data call; and (2) The first week in May and the third week in June for the July data call.

Workplan packages submitted to OBPA must include Regulatory Reform Officer (RRO) Summary Coversheets (enclosed) including EO 13771 data identifying regulatory and deregulatory actions and the total cost allowance for the agency, which is expected to be less than zero.

2. Is the process to determine actions for deregulation and regulation under Executive Order 13771 different from the process that was in place before Executive Order 13771? If so, how?

   USDA Response: The process outlined above includes substantial changes the Department introduced in December 2017 to couple the development and clearance of workplans, and the resulting generation of Regulation Information Numbers (RIN), to a more deliberative process for determining USDA's biannual regulatory agenda, and the corresponding regulatory budget required by Executive Order 13771.

   Two of the changes introduced in 2017 were driven specifically by the Executive Order. The first change was to limit the clearance and review of workplans to one-week periods tied to the development of the Spring and Fall Regulatory agendas. This change was made to provide the RRO with a complete picture of the regulatory actions being contemplated in the Department and their potential consequences under Executive Order 13771. The second change was the creation of an RRO Summary Coversheet required to accompany each workplan through the review and clearance process. The coversheet includes a proposed Executive Order 13771 designation and the estimated costs or savings, and is intended to facilitate an 'apples to apples' comparison among the various workplans.

3. Did your agency solicit suggestions for repeal and replacement from external stakeholders? If so, do you intend to repeat the process each year?

USDA Response: As noted above, the Department published a Request for Information (RFI) in the Federal Register on July 17, 2017 seeking public input on carrying out the mandates of Executive Order 13771. The comment period remained open for a full year and was extended to July 17, 2019 with a subsequent Federal Register publication on June 20, 2018.

As of September 12, 2018 more than 4,000 public comments have been received and forwarded to the correct agency overseeing the subject of the comment. Agencies are required to take the following actions with the public comments received: (1) review and catalogue the comments received as they would other comments received as part of an agency rulemaking; and (2) reference the comments in the preamble of future regulations when the comments are germane. Agencies are required to make it clear that the comments being discussed were received in response to the RFI.

4. Does your agency/department have a Regulatory Reform Taskforce? If so, what has been their role in implementing Executive Order 13771?

As noted above, (b) (6) convened the first meeting of USDA's Regulatory Reform Taskforce on May 31, 2017 with representatives from across USDA's regulatory agencies. Section 3(e) of the Executive Order calls on the Taskforce to seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations on regulations that impose unnecessary regulatory burdens on the American people. Through the RFI referenced above, USDA's Taskforce has continued to solicit ideas from the public to help evaluate existing regulations.

5. How does your agency/department plan to track progress toward achieving the required OMB performance indicators under Executive Order 13777?

OIRA provided an Executive Order 13771 worksheet to agencies with the Fall 2017 and Spring 2018 Regulatory Agenda data calls. The Department relied on OIRA's worksheet for reporting and tracking the costs and savings of its regulations subject to the Executive Order. Similarly, USDA relied on the Executive Order 13771 designation introduced in the Fall 2017 Regulatory Agenda to track the ratio of regulatory actions to deregulatory actions, and consequently the Department's compliance with the Executive Order's "2 for 1" requirement.

USDA is currently developing the Fall 2018 Regulatory Agenda and using the Executive Order 13771 ROCIS module to track both costs and savings for regulations subject to the Executive Order, and the Department's compliance with the Executive Order's "2 for 1" requirement. Use of the new module replaces the earlier worksheet and is required by OIRA.

6. Did your agency/department develop any additional internal guidance related to Executive Order 13771 beyond what was developed by OMB?

USDA has not developed or introduced additional guidance interpreting the Executive Order beyond what OIRA has provided. However, as discussed above, the Department did substantially revise its process for developing workplans and its biannual regulatory agenda

submission to achieve the goals set forward in the Executive Order. Additionally, agencies were directed to reference public comments received in response to the Department's Regulatory Reform RFI in subsequent, related rulemakings.

[AGENCY NAME]

Regulatory Reform Officer Summary Coversheet

Rule Title

RIN

Enter N/A if no RIN is assigned.

OBPA Workplan Number

To be completed by OBPA

Stage of Rulemaking

E.g. Final Rule

Summary Information Link: G.9.2 - Chapter 2 Indexing.docx

Recommended EO 12866 designation?	Not Significant	Significant	Econ. Significant
Recommended EO 13771 designation?	Deregulatory	Regulatory	Other
If this rule is subject to EO 13771, what are the costs or savings?		Costs $_____	Savings $_____
Is a new RIN needed?		YES	NO
If this is an existing RIN, is it currently on the inactive list?		YES	NO
If this is an existing RIN, when did it last appear the regulatory agenda (e.g. Spring 2017)?			
What stage of rulemaking appeared in the recent Agenda (e.g. Proposed Rule)?			
What was the estimated publication date in the recent Agenda?		____/____/_____	
Does this rulemaking relate to public comments received in response to the Regulatory Reform Request for Information of July 17, 2017?		YES	NO

Author: Jaya Brooks	*Start Date:* 05/22/2018	*Completion Date:* 05/22/18	
Reviewer: *LAJ, 5/25/18*			
Review Comments: *wp reviewed and approved.*			

Purpose: To document the OIG meeting with Office of Regulatory Policy and Management to discuss the implementation of Executive Order 13771.

Source: See source 1

Scope: Interviews

Conclusion:

1) Bill (acting director of Office of Regulatory Policy and Management) explained how the implementation of Executive Order 13771 impacts EPA's regulatory agenda. See question #1 [insert doc link?]
2) Bill explained the process by which the agency identifies actions for deregulation. See question #2 [insert doc link?]. Bill also explained the distinction between a deregulatory action that falls under Executive Order 13771 and a deregulatory action that falls under Executive Order 13777. See question #4a [insert doc link?]
3) Bill has provided documents per our request.

EO 13771 allows for deregulation only. As long as costs are saved, there can be more deregulation than regulation. Regulation is not required. (b) (5) [redacted]

Attendees: See source 2 sign in sheet.

Details:

GENERAL DISCUSSION QUESTIONS
EPA OIG meeting with Office of Regulatory Policy and Management
Monday, May 30, 2016, 10:30-11:45am Eastern
EPA North Building, AO conference room (b) (6)

Overall Meeting Objective: to learn about EPA's implementation of Executive Order (EO) 13771

~~U~~ Lauretta – introductions and mentioned that we want to understand what everything means from a ground level.

1. How does the implementation of EO 13771 impact EPA's regulatory agenda? What would successful implementation of the EO look like?
    a. (b) (5) This piece includes what is the 13771 status of the actions in the agenda, what are the known or anticipated costs/savings for those actions. Whenever something is final and next agenda comes out (regulatory agenda is produced every 6 months), there is some accounting that becomes available (what ends up being the actual quantified costs/savings), which is a new component of producing the regulatory agenda. *Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx*
        i. (b) (5) The rest of the regulatory process is the same as it's always been.

(b) (5)

2. Walk us through the decision-making process for selecting which regulations were deregulated.
    a. (b) (5)
    b. (b) (5)

(b) (5)

3. In the purpose of EO 13771, it states in part, ". . . it is important that for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."

   Please explain how in FY17 the number of final EPA deregulatory actions per EO 13771 was 16 and the number of final regulatory actions was 1? Do you expect this ratio of deregulatory to regulatory actions to change in future years? Why/why not?

   a. (b) (5)

   b. (b) (5)

PM Note: (b) (5)

4. How does EPA decide whether a deregulatory action relates to EO 13771 or EO 13777? How many of the current deregulatory actions relate to EO 13771 vs EO 13777?

   a. (b) (5)

5. Please elaborate of the role and responsibilities of the Regulatory Reform Task Force created under EO 13777. What was its contribution to the current list of deregulated actions on EPA's website?
    a. See 4a.

6. Please explain the impact of the Administrative Procedures Act in the implementation of 13771, and 13777, as appropriate.
    a. All regulations follow APA no matter what. They go through notice and comment. (b) (5) [redacted]

7. Per EO 13777, EPA's FY 2019 Annual Performance Plan (APP) must, at a minimum, include in their plans the following performance indicators: (b) (5) [redacted]

    1. Number of evaluations to identify potential EO 13771 deregulatory actions that included opportunity for public input and/or peer review;
    2. Number of EO 13771 deregulatory actions recommended by the Regulatory Reform Task Force to the agency head, consistent with applicable law;
    3. Number of EO 13771 deregulatory actions issued that address recommendations by the Regulatory Reform Task Force;

    - Number of EO 13771 regulatory actions and, separately, EO 13771 deregulatory actions issued; and (b) (5) [redacted]
    - Total incremental cost of all EO 13771 regulatory actions and EO 13771 deregulatory actions (including costs or cost savings carried over from previous fiscal years). (b) (5) [redacted]

    What is the status of EPA FY19 APP? What guidance, if any, is followed in the development of these performance measures?
    a. (b) (5) [redacted]

(b) (5) [redacted]

8. Has EPA taken actions to promote transparency throughout implementation of EO 13771?
    a. (b) (5) [redacted]
    b. Regulatory agenda – public facing website (regulatory.gov)shows what (b) (5) we think is regulatory and deregulatory.. separate website from EPA website. (b) (5) [redacted] The EPA website has everything on the agenda and anything in addition.

9. OMB guidance for 13771 states that agencies must continue to assess and consider both the benefits and costs of regulatory actions – through what process is this being done? Is only the monetary impact being considered?
    a. (b) (5) [redacted]

10. Can you provide some clarity on what EPA uses as a significant guidance document; and what is considered to be a regulatory action? We know that OMB describes what falls under both of these categories, but what is the Agency's interpretation of them? Are they interchangeable and do they constitute non-rulemaking as part as EO 13771- meaning it counts towards the total tally of the regulatory/deregulatory agenda)?
    a. (b) (5) [redacted]

PM note: (b) (5) [redacted]

Documents Requested: **all documents were provided via email after the meeting**

- Annualized cost savings and present value costs calculations for each of the finalized deregulatory actions under EO 13771 to date.
- Copies of recommendations (of rules that should be considered for repeal, replacement, or modification) provided by EPA Offices and Regions to the Regulatory Reform Task Force
- Copies of any Regulatory Reform Task Force reports to the Administrator as specified in EO 13777 such as progress reports

Author: R. Maxwell & J. Brooks	*Start Date: 8/8/2018*	*Completion Date: 8/17/2018*	
Reviewer: LAJ, 8/29/18			
Review Comments: wp reviewed and approved. Added orange text. LAJ			

Purpose: Evaluate the EPA's management controls for implementing Executive Order (E.O) 13771. Understand the relationship between E.O. 13777 and 13771, including any related management controls from the perspective of the Regulatory Reform Task Force (RRTF). *Link:* ***G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx***

Source: Interview with EPA OIG and EPA's RRTF.
Thursday, August 2, 2018 at 11:00am EDT
Ariel Rios North, Room (b) (6)
See sign-in sheet for the complete list of attendees.
[Link: E.1.4 - RRTF Sign-In Sheet 8-2-18.pdf]

Scope: Preliminary research.

Conclusion: According to the RRTF, Executive Orders 13771 and 13777 has not changed much of the regulatory process at EPA. The RRTF complied with E.O. 13777 and none of the activities (stakeholder meetings and progress reports) are being continued. They also consider E.O. 13771 is an accounting exercise. (b) (5) [redacted]

Details:
Jeff Harris started off the meeting with a brief background on our team, what the OIG does and what our intentions are. Mr. Harris explained that there has been no hotlines or accusations of wrongdoing and that we are simply interested in the controls in place and making sure that they are compliant with OMB. Mr. Harris further explained that the OIG already met with Al McGartland (NCEE Director) and representatives from the four media AAships (OCSPP, OW, OAR, OLEM). Now the OIG team is meeting with the RRTF to better understand its role in the execution of E.O. 13771.

(b) (6) had additional questions and recapped the introduction given by Jeff Harris. He stated that our review expanded to E.O. 13777 because of its obvious linkage to E.O. 13771. Requirements under OMB that you are using 13777 to funnel the annual plan that will drive 13771 activity into the future beginning in FY19. We are interested in how they are linked together and how the RRTF are pushing things forward.

GENERAL DISCUSSION QUESTIONS
EPA OIG meeting with EPA's Regulatory Reform Task Force

Our objective is to evaluate the EPA's management controls for implementing Executive Order (EO) 13771. During this meeting, we aim to better understand the relationship between EO 13777 and EO 13771, including any related management controls.

1) Please describe your respective roles and responsibilities on the EPA Regulatory Reform Task Force (RRTF). (b) (6) the Administrators memo that went out in March 2017. That memo launched the effort on the RRTF which when you look at the E.O. it just called for agencies to establish a task force (agencies were given discretion on how each task force could be comprised and its functions) and the only responsibilities per that E.O. was for the task force to complete the 90-day progress report and to identify rules that would be appropriate for review. For the members of the RRTF, this memo just identified senior policy officials that are already involved in the agencies rulemaking processes. (b) (5) the only additional factor was the 90-day progress report which was prepared by career staff and that the task force reviewed.

2) Under EO 13777, OMB requires agencies to include the following in their FY 2019 Annual Performance Plan:

    - Number of evaluations to identify potential EO 13771 deregulatory actions that included opportunity for public input and/or peer review;
    - Number of EO 13771 deregulatory actions recommended by the Regulatory Reform Task Force to the agency head, consistent with applicable law;
    - Number of EO 13771 deregulatory actions issued that address recommendations by the Regulatory Reform Task Force;
    - Number of EO 13771 regulatory actions and, separately, EO 13771 deregulatory actions issued; and

- Total incremental cost of all EO 13771 regulatory actions and EO 13771 deregulatory actions (including costs or cost savings carried over from previous fiscal years).

Please describe:

- How does EPA determine the actions and costs for regulation and/or deregulation? (b) (5) [redacted] J. Harris is referring to OMB Guidance document M-17-23 titled, Regulatory Reform Officers and Regulatory Policy Officers At Executive Departments and Agencies.

(b) (5) [redacted] We do the regulatory agenda twice a year and we are a big regulatory agency. One of our statutes has specific authorities requiring us to review statutes or regulatory requirements on a regular basis. The previous administration had similar requirements to do regulatory reviews. (b) (5) [redacted]

(b) (5) [redacted] retrospective review isn't something that is new to EPA. Dates to the Reagan Administration and mechanisms in place that we were reviewing rules. For instance, the Clean Air Act MATS program's 5-year review. NESHAPs is 8 years. The Regulatory Flexibility Act calls on the agency to retrospectively review those rules every 10 years. E.O. 13563-President Obama's executive order on retrospective review. (b) (5) [redacted] 3777 is similar to many initiatives launched through the White House. There are many task forces. It's meant to launch this effort by calling on the program offices to host the public meetings, teleconferences, start the regulatory docket, where we got all the public comments and to do the report.

Link: F.9.1 - No Linkage

L. Joseph: We understand and recognize what you've said thus far. Since this is an executive order and it's not just a one-and-done, it's something that will happen year after year. Our focus is on the controls that are in place to make sure that it is successful or can improve or identify what's most efficient. Our objective is to look at the controls that are in place for selecting deregulatory and regulatory actions for 13771. Since the regulatory agenda is the overarching piece that has everything in it then some of those regulatory and deregulatory actions come out of that agenda?

(b) (5) [redacted]

L. Joseph: Did the offices provide recommendations to the RRTF on actions they thought could be considered?

(b) (5) [redacted]

J. Harris: Reads parts of OMB Guidance M-17-23 on E.O. 13777. Specifically mentions the FY19 indicators, which are listed in question 2. J. Harris read the second performance indicator which states, "Number of E.O. 13771 deregulatory actions recommended by the RRTF to the agency head, consistent with applicable law." It is saying that the RRTF recommends actions to be considered for inclusion under the regulatory budget. We read this like you or the people that you designate are making these decisions.

(b) (5) [redacted]

(b) (5) [redacted]

[Analyst Note: In 1996, Congress passed the Small Business Regulatory Enforcement Fairness Act, or SBREFA in response to concerns expressed by the small business community. Under SBREFA federal agencies must involve small businesses in the development of some proposed rules through Small Business Advocacy Review Panels. https://www.osha.gov/dcsp/smallbusiness/sbrefa.html]

(b) (5) [redacted] FY19 strategic plan and performance measures, there's something in there that (section 2.2 or 2.3) under the rule of law section. We completely redid the strategic plan this past year and reorganized a number of the approaches. (b) (5) [redacted]

(b) (5) [redacted]

(b) (5), (b) (6) [redacted] . Harris: We are essentially looking for the agency's internal controls for implementing these executive orders. We read the OMB guidance, and we usually find a document that the agency wrote for itself on how it's going to implement. That's the kind of thing we are looking for when we mention internal procedures. A way of understanding how to execute this internally. We are searching for that guidance or understanding on how you got to $2 million per year. (b) (6) [redacted] That was actually the strategic plan that went out for public notice and comment. J. Harris: There is probably something behind that calculation. (b) (5) [redacted]

(b) (5) [redacted]

- Does the RRTF receive a "final list" of deregulatory actions and make decisions based on that? No
- Does the RRTF work directly with EPA program offices?
- What information is needed to assist with decision making regarding deregulatory and regulatory recommendations?
- Does the RRTF include external stakeholders in this process?
- Has the RRTF developed any additional performance indicators other than the required OMB indicators?

3) Has EPA's RRTF met with any other federal agencies to determine how they are implementing Executive Orders 13777 and 13771? If so, what were the similarities and differences in their challenges? (b) (5) [redacted]

J. Harris: Are there any subsequent reports to the 90-day report from the RRTF? (b) (6) The E.O. only called for the 90-day. We do the reg agenda. The reg agenda is the best place to look for what rules we are working on/not working on. Now there is a new column where you list if its regulatory or deregulatory.

(b) (6) There was another E.O. on energy independence. The Administrator tasked the RRTF with working on the response to that. There was report issued on regulations that impact energy development.

(b) (6): Per that E.O., there was a plan that was due May 15th and that got done. There was a draft plan that was submitted to OMB in the summer and the final was made public on our website and released in October. That was another effort led by the career staff. (b) (6) team did the drafting and the RRTF reviewed. That's all that E.O. called for.

L. Joseph: The 90-day report for many agencies was made public but not EPA. Why? (b) (6) Because it was internal to us deciding on rules that weren't in the reg agenda. (b) (5) [redacted]

(b) (5)

[Link: G.9.2 - Chapter 2-Results & Recommendations]

J. Harris: What are the next steps in the 90-day report? Was there any follow-on action or was it just routine? (b) (5)

This was part of the ADP development process.

J. Harris: What I'm hearing is that 13777 everything is pretty much normal in terms of what you're going to identify for regulations going forward or not. Just making agency decisions that is not being driven by a need to comply with 13777. (b) (5), (b) (6)

Check with the career staff because it was issued before the administrator was confirmed.

L. Joseph: For FY18 did you do a 90-day report? (b) (6) No, the E.O. didn't call for anything beyond the original 90-day report. The first 6 months there were a lot of calls for agencies to develop reports, initiate workgroups/task forces. Link: G.9.2 - Chapter 2 Indexing.docx

What does this task force do? (b) (5), (b) (6)

4) Are there any differences between the deregulatory and regulatory actions as defined and identified under EO 13771 and EO 13777? Not asked.

5) Are there any other contacts that we should speak with to further our understanding of the controls guiding the implementation of the two executive orders? (b) (5)

J. Harris Question: How do I identify across the agency what regulations are going to be counted? How do you adapt to when rules don't become final? What is it that goes into the entire decision-making process? What guides that process and makes sure we meet the goals? We have a good descriptor of the first 90 days and first year. (b) (5)

the reg agenda is where we had to put in

what the regulatory proposed budget is under 13771 (b) (5) [redacted]

L. Joseph: We know that there is a deregulatory website, is there one for the regulatory actions? (b) (6) [redacted] On the dereg page, we do link to regulations.gov. That's where all our rules and regulatory dockets are. It has different search tools. I don't think regulations.gov has the separate check box that you can choose regulatory or deregulatory. The dereg webpage was done for transparency. (b) (5) [redacted].

Requested Documents

- Any internal guidance used by the Regulatory Reform Task Force
- Copies of progress reports that have been developed

GENERAL DISCUSSION QUESTIONS

EPA OIG meeting with Office of Chemical Safety and Pollution Prevention

Monday, July 30, 2018, 3:00 pm EDT
Location: DCRoomEast(b) (6)
If needed teleconference available: (b) (6)

Author: Jaya Brooks	*Start Date:* 07/30/2018	*Completion Date:* 08/03/2018	
Reviewer:			
Review Comments:			

Purpose: To record OIG's meeting with OCSPP on the implementation of 13771 *Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx*

Source: Source 1 – sign in sheet

Scope: interview

Conclusion:

1) OCSPP works with the regulatory coordination staff within the OCSPP immediate staff for implementation of 13771.
2) OCSPP conducted public meetings with stakeholders to solicit input per guidance from Administrator Pruitt's May 2017 memo. See detail #1.
3) There was no internal guidance that was developed for implementation of 13771.
4) The deregulatory/regulatory actions are largely guided by the regulatory agenda and statutory requirements such as FIFRA and TSCA reauthorization. See detail #4.
5) Generally, the process for deregulatory and regulatory actions is the same however there is a focus on cost burden reduction.
6) The AAship's are not keeping track of their progress identified in the OMB guidance performance measures for 13777 . See detail 9a.

Overall Meeting Objective: to obtain internal perspectives on EPA work related to Executive Order (EO) 13771 and EO 13777, particularly as it pertains to the selection of actions for deregulation and regulation.

GENERAL DISCUSSION QUESTIONS

EPA OIG meeting with Office of Chemical Safety and Pollution Prevention

Monday, July 30, 2018, 3:00 pm EDT

Location: DCRoomEast(b) (6)

If needed teleconference available: (b) (6)

Jeff did introductions for the 2 for 1 executive order. Jeff said that this job is not about OCSPP, we are trying to understand the input and interaction of each of the primary AAships for the gathering and input of information on the implementation of 13771. We want to know what drives the decision making, in accordance with OMB guidance and how is it going to evolve in the future.

Jeff asked if OCSPP could provide what your respective roles on for implementation of the EO – maybe the main players tell us what you're responsible for?

(b) (5), (b) (6)

1) Describe the process used to determine potential actions for deregulation and regulation. Did you solicit input from stakeholders?
   a. (b) (6) after the Executive Order (13771) came out, Administrator Pruitt issued a memo about implementing the regulatory agenda and in that the memo each program office was asked to hold stakeholder meetings to solicit comment and input. They had one in May of 2017 in conjunction with Pesticide Program Dialogue Committee (PPDC) meeting. Took ½ of PPDC meeting where they had a stakeholder dialogue for actions that should be reconsidered, removed, etc.
   b. OPPT held 2 meetings where they gave opportunity for stakeholders to provide input.
      i. (b) (6) showing a document that has a list of ideas for revisiting → May 15, 2017)
   c. Jeff said – is there any expectation or plan to have an annual repeat of those meetings or was it a one-time deal? OPPT says they have no plans to have additional meetings. (b) (5), (b) (6) there is no plan to do a formal follow-up meeting. Link: F.9.6 - Stakeholder Outreach

   d. Jeff asked if there were any particular processes that you came across that you felt needed to be implemented for 13771? –Jeff said that last week when we spoke to OAR, we learned that there is little from 13771 that impacts their work. Jeff asked if OCSPP has found anything that is new or unique that falls under the EO that changes your agenda? Both said no.

2) What internal guidance (if any) does your office use to help guide the process?
   a. no

3) Is the process to determine actions for deregulation and regulation under EO 13771 different from the process that was in place before EO 13771? If so, how?
   a. no

4) Is there a set number or cost of deregulatory and/or regulatory actions that your AA-ship must fulfil by the end of the fiscal year?
   a. (b) (6) – we are just focused on the actions that we've prioritized (through the regulatory agenda and FIFRA).
   b. OPPT – agenda is driven by TSCA reauthorization of 2016 and isn't driven by this Executive Order. (b) (5)
      i. Jeff said there's a document that says, "projected savings for 13771 in 2017" – So regulatory action for user fees of TSCA savings of $68 million. Can you walk us through the logic of how fees will save money?
         1. OPPT said that they anticipate collecting $20 mil over 3-year FY period – it's a revenue generating rule. Under the new TSCA, we were given the authority to start collecting fees to offset 25 percent of the costs for implementing and running the program. This rule sets up a fee structure to collect roughly $60 million every 3 years or $20 million per year. (b) (5)
            .

            J. Harris: So it will be savings to the taxpayer but not to industry? Yes

   c. Follow up question from Lauretta: [Is it safe to draw the conclusion that] the process thus far for 13771 is officially the same [process as before 13771] but you're adding the cost? Or are you doing something different that we are not catching? Link: F.9.1 - No Linkage

GENERAL DISCUSSION QUESTIONS

EPA OIG meeting with Office of Chemical Safety and Pollution Prevention

Monday, July 30, 2018, 3:00 pm EDT

Location: DCRoomEast(b) (6)

If needed teleconference available: (b) (6)

i. (b) (5) [redacted]

5) In FY17, how many actions did your office propose for deregulation and regulation? In FY18? How many of those proposed actions resulted in final deregulated actions or regulated actions?
   a. (b) (5) [redacted]

6) Has the Regulatory Reform Task Force met with your office regarding the implementation of EO 13771 or 13777? How often and what was requested?
   a. Both said no at the office level.

7) How does your office work with other AA-ships regarding both EOs?
   a. Both said no. (b) (5) [redacted]

8) Describe the process used to determine the costs and benefits for proposed actions for deregulation.

GENERAL DISCUSSION QUESTIONS

EPA OIG meeting with Office of Chemical Safety and Pollution Prevention

Monday, July 30, 2018, 3:00 pm EDT
Location: DCRoomEast(b) (6)
If needed teleconference available: (b) (6)

a. We understand that cost is a driving force of the deregulation/regulation process under Executive Order 13771– is there anything that allows for human health benefits to outweigh the cost factor?
    i. OPP the EO didn't change anything in the rulemaking process. The 12866 still carries the day and FIFRA. FIFRA rulemaking requires a risk-benefit determination.
    ii. OPPT agrees with OPP.
b. Has there been any pushback internally to weigh human health/environmental benefits over costs?
    i. No internal pushback.

9) Under EO 13777, OMB requires agencies to include the following in their FY 2019 Annual Performance Plan:

- Number of evaluations to identify potential EO 13771 deregulatory actions that included opportunity for public input and/or peer review;
- Number of EO 13771 deregulatory actions recommended by the Regulatory Reform Task Force to the agency head, consistent with applicable law;
- Number of EO 13771 deregulatory actions issued that address recommendations by the Regulatory Reform Task Force;
- Number of EO 13771 regulatory actions and, separately, EO 13771 deregulatory actions issued; and
- Total incremental cost of all EO 13771 regulatory actions and EO 13771 deregulatory actions (including costs or cost savings carried over from previous fiscal years).

How does your office plan to track progress toward achieving the required OMB performance indicators under EO 13777?

a) Isn't done at the office level. Everything is flagged in the regulatory agenda.

10) Does your office have its own performance indicators related to deregulated and/or regulated actions under 13771 and/or 13777?

a. (b) (5), (b) (6)

11) Jeff – 1st year of implementation there were 16 deregulatory actions and 1 regulatory with 5 being from OCSPP OPPT (#13 and #16) – in reference to the list Jeff was showing.

GENERAL DISCUSSION QUESTIONS

EPA OIG meeting with Office of Chemical Safety and Pollution Prevention

Monday, July 30, 2018, 3:00 pm EDT
Location: DCRoomEast(b) (6)
If needed teleconference available: (b) (6)

a. (b) (6) #15 subsequently the court invalidated with that rule – delaying the effective date of a rule that was published in the FRN in 2017.
(b) (5)

b. (b) (5)

12) Lauretta – we are just trying to figure out if AAships are doing their own calculations, (b) (5)
. It was decided that OP would be taking the charge on that.

13) Lauretta followed up by asking (b) (5)

Requested Documents – OCSPP has no documents in reference to this. PM note- OCSPP referred us to OP for this information.

- Calculations/Spreadsheet for all OCSPP final deregulated and regulated actions completed to date under EO 13771
- Any internal guidance used for determining EO 13771 savings and costs
- Cost and Benefit analysis for all OCSPP final deregulated and regulated actions completed to date under EO 13771

Author: Jaya Brooks	*Start Date:* 09/24/2018	*Completion Date:*	
Reviewer: *LAJ, 9/27/18*			
Review Comments: *wp reviewed and approved.*			

Purpose: To document follow-up questions that the Office of Inspector General asked Office of Chief Financial Officer about their implementation of Executive Order 13771.
Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx

Source: Source 1 -- OCFO Questionnaire

Scope: Interviews

Conclusion:

1) OCFO coordinates with Office of Policy and Office of the Administrator to obtain reporting data. See question #1.
2) OCFO does not contribute to regulatory or deregulatory actions or the rulemaking process. See question #2 and #3.
3) Prior to Executive 13771, there was no regulatory budget. See question #4.
4) OCFO collects data on performance measures that are outlined in the M-17-23. See question #6.
5) OCFO has not met with the Regulatory Reform Task Force as a group however they did provide support to implement 13771 and 13777.

Details:

OCFO Questions

1. What role does OCFO have in assisting the agency with implementing Executive Order 13771?

OCFO provided assistance to OP (Office of Policy) to clarify the reporting requirements in EO 13771. Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx In addition, OCFO will coordinate with the Office of the Administrator (OA) to obtain reporting data for the three metrics that EPA included in the FY 2019 Congressional Justification and Annual Performance Plan: Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx

- Number of EO 13771 regulatory actions issued.
- Number of EO 13771 deregulatory actions issued.
- Total incremental cost of all EO 13771 regulatory and deregulatory actions. Link: Chapter 1 Indexing.docx

2. Does your role differ regarding deregulatory actions and new regulatory actions?

OCFO does not have a role in the agency's rulemaking process.

3. What is OCFO's role in determining the regulatory budget?

OCFO does not have a role in developing any regulatory cost estimates. (b) (5) [redacted].

4. How has OCFO's role in determining the regulatory budget changed since E.O. 13771?

No regulatory budget was required prior to EO 13771. OCFO does not have a role. OP engages with agency program offices to determine the regulatory budget.

5. Is meeting the deregulatory goal for budget a separate and distinct goal from the 2-for-1 requirement?

OCFO's understanding (b) (5) [redacted].

6. What role does OCFO play in tracking the FY19 performance indicators under E.O. 13777?

EO 13777 did not include any performance indicators. However, consistent with M-17-23, OCFO collects the data for these measures from OP. OP worked with OMB to report on the following three performance indicators (as required per M-17-23). Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx They are:

- Number of EO 13771 regulatory actions issued.
- Number of EO 13771 deregulatory actions issued.
- Total incremental cost of all EO 13771 regulatory and deregulatory actions.

7. Are there any additional EPA performance measures being tracked outside of those listed in OMB's M-17-23 memo?

(b) (5) [redacted]

8. Under EO 13777, OMB requires agencies to include five performance indicators related to EO 13771 in their FY 2019 Annual Performance Plan, EPA seems to only have two of the five indicators in their performance plan. Does OCFO have knowledge of why only two of the five indicators are being included in EPA's Plan?

OP worked with OMB to report the following three measures in the FY 2019 Annual Performance Plan:

- Number of EO 13771 regulatory actions issued.
- Number of EO 13771 deregulatory actions issued.
- Total incremental cost of all EO 13771 regulatory and deregulatory actions.

9. Has OCFO received FY 2019 budget caps (annualized cost savings/present value cost savings) from OMB? If so, what are they?

OCFO does not have a role in developing any regulatory cost estimates or the regulatory budget. OP works with OMB on setting the agency's regulatory budget.

10. Is EPA on track to meet its FY 2018 budget caps?

OCFO does not have a role in developing any regulatory cost estimates or the regulatory budget. OP tracks the agency's compliance with the regulatory budget.

11. Has the Regulatory Reform Task Force met with your office regarding the implementation of E.O. 137771 or 13777?

While there have been no formal meetings between OCFO and the full Regulatory Reform Task Force (RRTF), OCFO officials have engaged with members of the RRTF and its support staff on EO 13771 and 13777.

12. What specific actions did OCFO take under E.O. 137771 and E.O. 13777? Is OCFO planning to do these activities again or were those one-time actions?

OCFO does not have a role in developing regulatory of deregulatory actions. OCFO coordinated with OP on performance reporting discussed above.

Author: Jaya Brooks	*Start Date:* 11/30/2018	*Completion Date:* 11/30/2018	
Reviewer: JKHarris 12/18/2018			
Review Comments:			

Purpose: To document the Office of Management and Budget's response to our questionnaire about the implementation of Executive Order 13771 and Executive Order 13777,

Source: Source 1: email correspondence from EPA OIG to OMB

Scope: During our Go/No-Go Meeting the team decided to go into fieldwork with the intent on reaching out to other federal agencies to inquire about how they are implementing Executive Orders 13771 and 13777.

Conclusion: OMB did not respond to our request for comment on the implementation of Executive Order 13771. *Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx*

Author: Jaya Brooks	*Start Date:* 05/03/2018	*Completion Date:* 05/04/2018	
Reviewer: *LAJ, 5/10/18*			
Review Comments: wp reviewed and approved			

Purpose: To document interview with the Sabin Center Columbia School of Law *Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx*

Source: See source 1

Scope: Preliminary Research; Prior Reports and Literature Reviews

Conclusion: No conclusions were reached from this WP. However the information provided will be used to further this evaluation.

Details:

The following questions were provided to the interviewees prior to the meeting.

GENERAL DISCUSSION QUESTIONS
EPA OIG meeting with Sabin Climate Center

Tuesday, May 1, 2018, 1:00 pm EST
Teleconference: (b) (6)

Attendees:
OAE OIG – Jeff Harris (DC), Lauretta Joseph (NYC), Jaya Brooks (DC)
Sabin Climate Center – (b) (6) @law.columbia.edu and (b) (6) columbia.edu

Lauretta provided background information on our team and how we came to this project.

Overall Meeting Objective: to obtain external perspectives on EPA work related to Executive Order 13771, particularly as it pertains to legal issues and stakeholder engagement

(b) (6)

1. Who are the major customers/stakeholders you represent? Please tell us about your expertise related to interpreting Executive Order 13771.

a. (b) (6) the Sabin Center does not have any stakeholders. Instead, they are a think tank that provides resources for various organizations as it relates to climate science. Sabin Center believes that the Executive Order is unlawful and illegal. This executive order is trying to revoke congress' oversight and giving power to the Executive branch to regulate.

2. Are you familiar with current litigation related to EO 13771, if so could you discuss it and its intent?
   a. (b) (5) are aware that it going on, and have been keeping up with the status of it. (b) (5) .
   b. Lauretta followed up and asked if they've spoken to any other IG's, and they said as it relates to the Executive Order, no.

3. Has Sabin conducted any specific reviews related to EO 13771 decisions at the EPA, if so please describe your work.
   a. They have a deregulation tracker that keeps tabs on what is being done in the deregulation/regulation field from the EPA. This stemmed from a regulation tracker that was created during the Obama administration just to track what was happening. They wanted to keep tracking regulations, since they believe that any regulatory action, even if it's a deregulatory action, is still a regulatory action. They are aware of other entities that use it to track what's going on, and it's meant to be a resource.

4. Are you aware of any differences in the implementation of EO 13771 across federal environmental and natural resource-related agencies? Any best practices or lessons learned?
   a. Sabin Center says that the way that 13771 and 13777 are written, it allows for a very broad interpretation of what can be done within the Executive Order. It provides groundwork for what needs to be done, however specific actions are not laid out and are up to the agency head as to what that means for each agency.
      i. A few rules stick out to the Sabin Center that are undergoing deregulation in the name of 13771 – BLM methane Waste Rule → forgoing the consideration of the benefits of the rule

5. While researching Executive Order 13771, it seems that much of the guidance is tied to Executive Order 13777. Do these 2 Executive Orders rely on each other in order to be implemented?
   a. 13771 came before 13777, however, 13777 and 13771 do not rely on each other for implementation – can be independently implemented and carried out. As mentioned previously, it has broad interpretation and ultimately up to the agency to move forward with it.

6. From your perspective, what could be the long-term impact(s) (intended and unintended) of EO 13771? Specifically, what human health and environmental impacts do you foresee?
    a. (b) (5) [redacted]

7. One focus of our evaluation is to determine if and how the EO is implemented consistently and appropriately across EPA media offices (i.e. air, land, water). Do you have any concerns related to EPA's implementation of EO 13771?
    a. The Sabin Center believes that EPA will have a difficult time reconciling whether or not to follow the statute, or the executive order. She also believes it'll halt transparency

8. As a part of EO 13771, public stakeholder meetings are held. Has Sabin participated in any to date? Do have any thoughts on the quality and use of the outreach?
    a. No participation

9. From what we have researched thus far, in FY2017 EPA deregulated 16 rules and (possibly) added only 1 regulation. Is there a concern that EO 13771 will only be used for deregulation and no new regulations will be added? Would Sabin view this as a violation of the EO if only deregulation occurs?
    a. Deregulation is a regulatory action, so they are fulfilling the Executive Order.. The deregulatory tracker is compiling all regulatory and deregulatory actions that have occurred in the administration as it's fulfilling Executive Order 13771. Lauretta followed up and asked could it be interpreted that for every 2 out, 1 new one has to go in? They said maybe, however, they are still fulfilling the executive order by deregulation even though nothing new is being put in its place.

10. What are the existing and potential challenges you have heard of/ or anticipate related to the implementation of EO 13771?
    a. It will cause a lot of litigation and legal challenges as time moves on. They will be spending a of time and resources on fighting this rule in the courts.

11. Please provide any additional contacts that you believe we should consider.
    a. NYU Law School Policy Institute-- advocacy group ; they conduct a lot of work regarding cost benefit for regulations.

Author: Jaya Brooks	*Start Date:* 04/17/18	*Completion Date:* 04/17/18	
Reviewer: *LAJ, 4/18/18*			
Review Comments: *wp reviewed and approved. PM edits in orange and/or strikethrough*			

Purpose: To obtain discuss Executive Order 13771 with Earth Justice *Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx*

Source: Meeting participants from EarthJustice; Questions provided to participants via email prior to meeting. Meeting held Tuesday, April 16, 2018, 11:30 am EST
Teleconference: (b) (6)

Participants:

(b) (6) – EarthJustice (b) (6) @earthjustice.org
(b) (6) – EarthJustice (b) (6) @earthjustice.org
(b) (6) (b) (6) EarthJustice; (b) (6) @earthjustice.org;
Jeff Harris – OIG, OAE, Director, 202-566-0831
Lauretta Joseph – OIG, OAE, PM, 212-637-3049
Jaya – OIG , OAE, Program Analyst, 202-566-2526

Scope: Preliminary Research

Conclusion: No conclusions were reached from this WP. However the information provided will be used to further this evaluation.

Details:

Intros and background on Executive Order (EO)/ OIG OAE Office

Lauretta Joseph provided background on the OIG: Evaluations/Audits are done on a rolling basis but have some discretion as to what the job may look like. (b) (5) Main purpose of this meeting is to learn about the challenges, goals, etc from EarthJustice.

EarthJustice asked what was the intent of looking at EO 13771. Jeff says this (EO) has been in the news the past year and raises a lot of q's as to what OMB docs look like, are they following the intent to capture cost/benefit and being utilized in the regulations. We are interested into looking at it across all environmental media. Question of implementation and the extent to a logical framework to which it's being followed. (b) (5)

(b) (5) [redacted]

EarthJustice – limits: we're part of the legal group that's representing the natural resources defense counsel (b) (5) [redacted]

Link: G.9.1 - Chapter 1-Introduction - Chapter 1 Indexing.docx

- (b) (5) [redacted]

The Questions below were supplied prior to the meeting via email to EarthJustice.

Overall Meeting Objective: to obtain external perspectives on EPA work related to Executive Order 13771, particularly as it pertains to legal issues and stakeholder engagement

1. Who are the major customers/stakeholders you represent? Please tell us about your expertise related to interpreting Executive Order 13771.
    a. (b) (5) [redacted]

2. Are you familiar with current litigation related to EO 13771, if so could you discuss it and its intent?
    a. Cannot comment because of pending litigation

3. Has EarthJustice conducted any specific reviews related to EO 13771 decisions at the EPA, if so please describe your work.

    a. Can't answer 3 or 4 because of consultation with other lawyers on it. You're going to see a lot of delay and paralysis and have a whole new system that will overlay this. It's going to look like nothing is happening and it's going to cause weaker protections because there are going to offset the cost.

4. Are you aware of any differences in the implementation of EO 13771 across federal environmental and natural resource-related agencies? Any best practices or lessons learned?
    a. Can't comment

5. From your perspective, what could be the long-term impact(s) (intended and unintended) of EO 13771? Specifically, what human health and environmental impacts do you foresee?

a. A lot of the regulations that are featured for standing purposes have a cost-benefit analysis to society you have statutes that think of it in one way, and then you have the EO which causes it to go in a different way.

6. One focus of our evaluation is to determine if and how the EO is implemented consistently and appropriately across EPA media offices (i.e. air, land, water). Do you have any concerns related to EPA's implementation of EO 13771?
   a. Can't answer this one

7. As a part of EO 13771, public stakeholder meetings are held. Has EarthJustice participated in any to date? Do have any thoughts on the quality and use of the outreach?
   a. (b) (6) doesn't know of anything and (b) (6) didn't either. Another EO was about identifying deregulatory activities – related. (b) (6) they did participate in WPS, TSCA, lead at stakeholder meeting, as well as safe power plan. Lauretta clarified that these examples are specifically (b) (5) related to a deregulation EO

8. From what we have researched thus far, in FY2017 EPA deregulated 16 rules and (possibly) added only 1 regulation. Is there a concern that EO 13771 will only be used for deregulation and no new regulations will be added? Would EarthJustice view Is this as a violation of the EO if only deregulation occurs?
   a. Added one because it was already done, and then there was a lawsuit (talking about the mercury from dentists rule)
   b. 3 rules promulgated under TSCA that were mandated → (b) (5), (b) (6)
   c. Also look at what they didn't regulate – wouldn't necessarily fall under the count
   d. (b) (5)

9. What are the existing and potential challenges you have heard of/ or anticipate related to the implementation of EO 13771?
   a. (b) (5)

10. Please provide any additional contacts that you believe we should consider.
    a. Talk to former EPA officials who ran program in the past – how things have changed and what this could do
    b. Former ~~govt~~ government officials have filed declarations so it might be worthwhile to get their perspective
11. Jeff asked -- Our jurisdiction/limited to EPA and yours would be a much broader than that – number of federal agencies and looking at how they're implementing and adapting. Have you seen any differences between other agencies? → EarthJustice stated that they are not able to talk at length because it is a part of their litigation. They will be looking at that in connection with our legal challenge. One difference you're going to see (for example the mercury) came out of litigation. Have more actions been based on litigation and action.
12. EarthJustice ~~EJ~~ says -- (b) (5) [redacted]

Lauretta closed the meeting and asked for the option to contact them with followup questions as we move forward.

During the conversation with EarthJustice, it was mentioned that they have done extensive work as it relates to Pesticide Applicators and worker protection standards (WPS). Following our discussion about the Executive Order, we stayed on the line for a quick discussion about WPS.

WPS and Certified Application:

1. (b) (6) [redacted] that they are actively involved in ~~that~~ WPS, especially with the litigation of delayed role. We are interested in any information you (OIG) have?
    a. Jeff – we issued a report in regards to the implementation of the WPS and we were mostly of the middle of things as they first rejected the petition from SA and then accepted the petition and then delayed and just as we were about to issue the report they issued NPRM. (b) (5) [redacted]
    b. (b) (5) [redacted]

Center on
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Evaluating the Trump Administration's Regulatory Reform Program

Ted Gayer
THE BROOKINGS INSTITUTION

Robert Litan
THE COUNCIL ON FOREIGN RELATIONS

Philip Wallach
THE BROOKINGS INSTITUTION

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Introduction

In his first week in office, President Trump issued Executive Order 13771, which aims to "manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations." It requires that "for every new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."

At least since the Ford administration, there have been numerous efforts to require agencies to pay greater heed to analyzing the costs and benefits of major new regulations—indeed, the regulatory process has been the rare policy area in which presidents from the two major parties have broadly agreed, building on each other's efforts over the course of decades:

- President Carter formally launched White House oversight of major regulations (those with an estimated annual economic impact of at least $100 million) issued by executive branch agencies with Executive Order 12044, which mandated that agencies conduct regulatory analyses before issuing major rules, including a consideration of their economic consequences, but did not require balancing costs against estimated benefits.

- President Reagan replaced Carter's order with Executive Order 12291, which was the first to require that agencies explicitly balance estimated benefits of major regulations against their costs, assuming their underlying statutes permit it, stating that "regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society."

- President Clinton replaced that order with Executive Order 12866, which shifted from the requirement that benefits "outweigh" costs to the requirement that benefits "justify" costs, stating that "each agency shall assess both the costs and the benefits of the intended regulation and … propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs."

- President George W. Bush lightly amended E.O. 12866 through Executive Order 13422 (later revoked by President Obama), extending the White House oversight requirements to guidance documents issued by executive branch agencies.

- President Obama's Executive Order 13563 reaffirmed the principles established in E.O. 12866, including that agencies should propose or adopt a regulation only if "benefits justify its costs."[1]

. . .

1. Each of the orders had other provisions, such as requiring agencies to publish regulatory agendas, or schedules of rules they intended to propose. We concentrate here on those provisions of the orders that specifically relate to the estimation and balancing of costs and benefits.

While prospective benefit-cost analyses have achieved a role in regulatory policymaking, regulations have accumulated for decades because agencies make little effort to eliminate or revise existing burdensome regulations. Congress addressed one particular burden of regulation with its Paperwork Reduction Acts of 1980 and 1995 (which created a nominal "budget" annually reported to Congress, though the reporting process has no budget-like properties), but the larger problem clearly persists (Dudley, 2016, p. 263). The Obama administration undertook a systematic "regulatory review" or "lookback" program beginning in 2011 meant to spur agencies to action in scrutinizing and updating old rules, with modest success (Raso, 2017).

The Trump administration's initiative, announced in Executive Order 13771, can be seen as a reaction to the limited use and effectiveness of the retrospective analyses called for by the Obama administration (and its predecessors). It is meant to force agencies to reexamine and prioritize existing regulations, by requiring that two old rules be eliminated for any new one proposed. Of course, it would be more desirable for harmful rules to be eliminated without any connection to new rules, but there are conceivable political economy reasons, discussed below, for why tying the elimination of old rules to the creation of new ones might make sense.

President Trump's executive order also establishes an administration-wide "regulatory budget," an idea that has percolated in academia and think tanks for some time. If properly implemented, a regulatory budget could have the most far-reaching impact of any executive branch regulatory reform since the Ford administration first introduced economic analysis into the regulatory review process.

There is every sign that the administration is serious about making its two-for-one requirement and the regulatory budget a reality in the coming months, although—as with many of the administration's policy goals—the likelihood of success is inhibited by the President's unfortunate and repeated tendency to divide rather than unite our body politic, and in the process divert attention from his own policy agenda.

This paper seeks to explain what Executive Order 13771 will mean in practice and identify the legal and practical challenges that administration officials responsible for implementing it will face. It then considers the worst- and best-case scenarios for the Trump administration's regulatory budget process and concludes by offering advice on how to make the most of this important opportunity.

The Rationale for a Regulatory Budget

The development of the regulatory policymaking process described above has been guided in large part by the economic principle that optimal policy (regulatory or otherwise) is achieved by maximizing net social benefits (the difference between total benefits and total costs to society). Indeed, President Carter's E.O. 12044 states that "regulatory objectives shall be chosen to maximize the net benefits to society," and the later executive orders also seek to "maximize net benefits," although the Clinton and Obama administrations explicitly require additional consideration of "distributive impacts" and "equity" when computing net benefits. These executive orders have spurred administrative guidance documents on best practices for agencies on how to measure benefits and costs of regulatory options. In short, it is now well established, through successive presidential administrations of both parties, that regulatory policymaking should be guided, to the extent permitted by law, by balancing benefits against costs.

This goal of maximizing net social benefits, accounting for distributive impacts and equity considerations, is the conceptually correct approach to regulating private activity. Regulations are meant to address market failures—such as firms taking illegal actions to acquire and exercise monopoly power, imposing costs on others through their production processes, or exploiting consumers' lack of information about the quality of their products and services. Agencies should identify the existence of market failures, evaluate the options for addressing them, analyze the benefits and costs associated with each option (including the benefits and costs of no government action), and choose the approach that maximizes net social benefits (which may or may not involve government intervention). Of course, in practice, the devil is in the details: conventions for evaluating costs and benefits, which are often difficult to quantify, have often been politically controversial. In addition, regulatory agencies may not fully account for new technologies when measuring the economic impacts of their proposed interventions; for example, new information sources on the Internet have the potential to reduce disclosure problems, and technologically advanced firms entering a market have the potential to mitigate monopoly.

In a world where regulatory agencies heeded the directive to maximize net social benefits—and where there was agreement on how to quantify them—a regulatory budget as proposed by President Trump would be unnecessary and likely harmful. If, and only if, regulations are adopted that maximize benefits less costs, then imposing a cost budget for the agencies would at best be non-binding or more likely block welfare-improving regulations. *At least as far as economic theory is concerned, a*ny *new regulation that offers more benefits than costs should be undertaken*, regardless of *its contribution to the aggregate regulatory cost to society*.

The justification for a regulatory budget, however, is that the real-world political economy of the regulatory policymaking process deviates from the conceptual ideal of maximizing net social benefits, leading to an inefficiently high burden from regulations. The main reason why the regulatory policymaking process might fall short of the conceptual ideal is that regulators are subject to public choice incentives that can make them prone to errors or misuse of the benefit-cost approach in regulatory decisionmaking. For example, regulators might succumb to incentives to maximize their authority rather than social welfare, pursuing regulatory actions that expand the scope of their agency but do not increase net benefits (Niskanen, 1971). Also, where a policy has high but diffuse costs and low but concentrated benefits, the stronger incentives of the few may have greater influence over the policymaker than the preferences of the many, leading to inefficient policies (Tullock, 2008). The concern is that these public choice incentives lead to inefficient regulations that impose a "government failure" whose costs outweigh any benefits from the attempted correction of a market failure (Winston, 2006). In addition, and perhaps most important, many regulatory statutes—those that authorize or compel agencies to issue rules in the first place—*do not permit* agencies to balance benefits against costs, or effectively limit their ability to do so.

As important as they are, institutional reforms of the regulatory process to increase adherence to the benefit-cost principle might not fully resolve the perverse incentives outlined above, and certainly cannot fix statutes that prohibit agency decisionmakers to act on their benefit-cost analyses. Examples of these reforms include proposals to establish an independent, bipartisan commission or a federal agency outside of the executive branch to either conduct or evaluate benefit-cost analyses, in order to address the perceived conflicts entailed when agencies conduct evaluations of their own regulatory proposals (Hahn and Litan, 1999; Greenstone, 2011); attempts by past administrations, such as President Obama's Executive Order 13563, to require agencies to conduct retrospective analyses of existing regulations, since evaluations made before regulations are implemented (when little is known about their effects) are likely

to have a high degree of error; proposals to require independent agencies to show benefits justify the costs (Hahn and Sunstein, 2002); or the proposal that agencies be required to undertake a new rulemaking when the results from a retrospective analysis find that the original analysis was misleading (Greenstone, 2011).

President Trump's approach—both the "two-for-one" requirement and the regulatory budget—breaks from the historical emphasis on maximizing net benefits and improving the use of and commitment to benefit-cost analysis, and instead offers a blunt institutional reform to rein in regulatory costs (without attention to benefits). This is presented as necessary to counter the political impulses that may produce excessive or inefficient regulation, or regulation that could be better designed (for example by using market-like incentives rather than commands and controls). Additionally, although the executive order does not make the point directly, a subsequent executive order (13777) on the enforcement of the two-for-one and regulatory budget requirements explicitly cites the concern that many existing regulations insufficiently value American jobs and job creation.

President Trump's cost-focused regulatory budget is not a new idea, though it is the first time the concept has actually been tried in the United States. A 1978 paper by Robert Crandall argues, "The most practical possibility for confronting regulators with the costs of their actions would be to construct a shadow budget to cover the resources that the agency requires private agents to consume in the pursuit of the regulatory goal" (Crandall, 1978, p. 429). The 1980 *Economic Report of the President* provides some cautions about the problems with a regulatory budget, but acknowledges the need for more consideration of "the impact of regulations on the economy" and the possibility that "tools like the regulatory budget may have to be developed" (Council of Economic Advisers, 1980, p. 126).

Indeed, the earlier proposals for adopting a regulatory budget recognize the merits of the benefit-cost approach and the goal of maximizing net social benefits; but they also acknowledge a need to counter the political incentives that can lead to overregulation. The logic of a regulatory budget is therefore political rather than economic. It is analogous to the fiscal budget for direct expenditures that limit the authority of agency spending. As discussed by DeMuth (1980, p. 34), using the two approaches (benefit-cost analysis and a cost budget) in tandem is "superior to either taken alone in constraining the costs of regulatory overreaching." Indeed, it is important to emphasize that these previous advocates for a regulatory budget see it as a supplement to, not as a replacement for, benefit-cost analysis; it is meant to counter the political impulses that can lead to overregulation. It was therefore a cause for concern that Trump's Executive Order 13771 did not reaffirm (as previous administrations have done) the important role of benefit-cost analysis, although this was rectified in a subsequent executive order (13777) and in the Office of Management and Budget's (OMB) guidance documents.

The regulatory budget idea is similar to the cost-effectiveness arguments for such policies as cap-and-trade to address climate change. Clearly, the goal is to reduce carbon emissions to the level that maximizes net benefits; but given the difficulty of measuring the benefits and costs of emissions abatement, a second-best approach is to develop a rough emissions target and use a price mechanism like cap-and-trade to achieve it at the least possible cost. Similarly, the regulatory budget attempts to fix the level of regulatory burden and provide incentives for prioritizing the highest-benefit regulations under this constraint.

Unlike the Trump regulatory budget, the earlier regulatory budget proposals advocated a strong role for Congress, similar to its role in the conventional fiscal expenditure budget process. As described by DeMuth (1980, pp. 30–31): "Each year (or at some longer interval), the federal government would establish an upper limit on the costs of its regulatory activities to the economy and would apportion this

sum among the individual regulatory agencies. This would presumably involve a budget proposal developed by the Office of Management and Budget in negotiation with the regulatory agencies, approved by the President, and submitted to Congress for review, revision, and passage." Litan and Nordhaus (1983) similarly argue that any budget-like process must "involve both the executive and legislative branches." In their approach, however, Congress would not vote on a total regulatory cost cap, given the complexities in quantifying regulatory costs (an issue with the Trump concept we discuss later), but rather approve a *list* of proposed rules compiled by the White House (or presumably OMB), each with estimated costs. Congress effectively would be voting on whether to permit the proposal to go forward through the conventional rulemaking process, though Congress could also modify the list if it desired.[2]

Whether or not a regulatory budget (in either dollar or list form) enhances social welfare depends on whether it is more likely to lead agencies to carefully prioritize their regulatory efforts, eliminating or revising their less effective regulations, or whether an exclusive focus on the cost constraint—absent consideration of the benefits of regulatory options—will lead agencies to forgo regulations that have high costs but positive net benefits. There are two categories of challenges that could limit the effectiveness of the regulatory budget approach: (i) regulatory policies, unlike expenditure policies, are subject to the Administrative Procedure Act, which limits the ability to eliminate, reform, or otherwise reallocate costs across regulations within and across agencies; (ii) there are many practical difficulties of implementing a regulatory budget, especially the challenge of measuring and monitoring regulatory costs. We address both of these challenges below. But first we turn to the lessons from other countries that have attempted a similar plan and then to the specific features of the regulatory budget plan that the Trump administration has announced.

Lessons from Canada and the United Kingdom

While the regulatory budget idea was first debated within the United States decades ago, Canada and the United Kingdom both moved to implement working systems before the U.S. In 2001, the Canadian province of British Columbia committed to reducing the regulatory burden by one-third in three years. It required that each ministry establish a baseline of its existing inventory of "regulatory requirements," defined as "an action or step that must be taken, or information that must be provided to access services, carry out business, or meet legal responsibilities under provincial legislation, regulation, policy, or forms" (British Columbia, 2016, p. 1). The initial count found over 330,000 such regulatory actions. In order to meet the three-year goal, each cabinet minister was required to match any new regulatory requirement with a plan to eliminate at least two offsetting requirements (Speer, 2016). In 2004, having surpassed the goal and achieving a 40 percent reduction in regulatory requirements, British Columbia imposed a regulatory cap mandating no net increase in regulatory requirements. This requirement has been extended three times, most recently to last until 2019, leading to a total reduction in regulatory requirements of 49 percent since 2001 (British Columbia, 2017).

. . .

2. Posner (2002) advocates for a "net benefit account" budget, in which the benefit of every regulation from an agency would add to that agency's net benefit account and the cost would subtract from that account. Agencies would be required to keep positive balances.

Motivated by the success in British Columbia, in 2012 the Conservative-led Government of Canada released the Red Tape Reduction Action Plan, which required that for any new or amended regulation, regulators offset "an equal amount of administrative burden cost" from existing regulations (Government of Canada, 2012, p. 4). It also required at least one regulation be eliminated for every new one introduced (Government of Canada, 2016).

The Canada-wide regulatory plan differed from the approach taken by British Columbia in two important respects: (i) the Canadian regulatory budget is for "regulations," not the much more numerous "regulatory requirements"; (ii) the Canadian measure went beyond a cap on the number of requirements by imposing a *cost budget*, specifically, a cap on the "administrative burden cost," which is based on the Standard Cost Model used in many countries to estimate the amount of time and resources that businesses spend on complying with regulations (OECD, 2016). The Canadian measure considers these costs for only the first ten years of the regulation, applying a 7 percent discount rate (Government of Canada, 2015a). This internal rule of the government has led to reductions in administrative costs and fewer regulations (Government of Canada, 2015b), and was codified into Canadian law in 2015 (Jones, 2015).

In January 2011, the Conservative and Liberal Democrat coalition government of the United Kingdom instituted a regulatory reform plan that included a "one-in, one-out" system in which each department must assess the "net cost to business" of complying with any proposed regulation, ensure that the cost estimate is validated by an independent committee of experts (known as the Regulatory Policy Committee), and find a deregulatory measure that offsets the cost of the new regulation (HM Government, 2011). In January 2013, the requirement was increased to a "one-in, two-out" rule, which requires that the deregulatory measures must offset *twice the cost* of the new regulation, not merely eliminating two other regulations, as Canada has required and the Trump administration has just adopted (Department for Business, Innovation & Skills, 2014). In March 2016, the United Kingdom ramped up its regulatory offset program again, to become "one-in, three-out," again referring to costs, not the number of regulations (HM Government, 2016). The "net cost to business" under the United Kingdom's approach is computed as the "annualized direct net cost to business, incorporating direct recurring costs and transition costs, direct recurring benefits, and direct transitional benefits, spread out over the lifetime of the policy" (Department for Business, Innovation & Skills, 2014, p. 55).

The "deregulatory" measures pursued as offsets in the U.K. system often do not actually remove any regulatory requirements, but rather make regulatory compliance *less costly*, for instance by streamlining paperwork processes so that businesses could make some filings without the need of a lawyer (Kohli, 2017). Notably, European Union regulations and directives have been exempt from this requirement. The U.K. government reports that its regulatory offset polices have reduced both the number of regulations and the associated costs to businesses (Department for Business, Innovation & Skills, 2014). However, it is important to note that the U.K. system is designed only to offset the "net cost to business," which means that transfers from businesses to consumers or employees count as cost reductions. For example, almost half of the cost reduction required of the Department of Environment, Food & Rural Affairs was achieved by requiring larger retailers to charge for plastic bags, and substantial business cost reductions resulted from reducing required employer contributions to pension benefits (Morse, 2016). The United Kingdom's regulatory initiative, however, does not use a social welfare yardstick, and thus does not seek to maximize the net benefits of its regulations to society as a whole.

President Trump's Two-for-One and Regulatory Budget Plans

The Trump administration's push to join Canada and the United Kingdom as actual practitioners of regulatory budgeting is well underway, with many decisions having been made during the presidential transition and in the months following the inauguration.

President Trump issued Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," on January 30, 2017. As with the systems of Canada and the United Kingdom, it established a pay-as-you-go approach to constraining regulatory costs, requiring that "for every one new regulation issued, at least two prior regulations be identified for elimination." In addition, for the remainder of fiscal year 2017, the agencies are required to keep their budgets neutral, meaning "the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero." For fiscal year 2018 and continuing thereafter, during the presidential budget process, the OMB director must identify "a total amount of incremental costs that will be allowed for each agency in issuing new regulations and repealing regulations for the next fiscal year. No regulations exceeding the agency's total incremental cost allowance will be permitted in that fiscal year." Importantly, moving forward, the regulatory budget for each individual agency will be allowed to increase or decrease at the discretion of the OMB Director.

The regulatory budgets under the Trump order are agency-specific and not initially specified in the aggregate (though an aggregate incremental figure can be mathematically derived simply by adding up the agency budgets). It is reasonable to infer that legal constraints imposed by multiple regulatory authorizing statutes induced the administration to administer the regulatory budgets by agency, rather than in the aggregate.

Executive Order 13771 is deferential to legal constraints, citing that the regulatory cap in fiscal year 2017 applies "unless otherwise required by law," that the requirement to offset future regulations applies "to the extent permitted by law," and that "any agency eliminating existing costs associated with prior regulations … shall do so in accordance with the Administrative Procedure Act and applicable law."

Executive Order 13771 takes an expansive view of what constitutes a regulation subject to the two-for-one requirement, including an "agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency." The order exempts "military regulations, national security, or foreign affairs function of the United States," or "regulations related to agency organization, management, or personnel, or any other category of regulations exempted by the [OMB] Director."[3] It also enables the OMB Director to provide guidance on how to measure and estimate regulatory costs, what qualifies as new and offsetting regulations, how to account for costs across different fiscal years and across different agencies, and which emergency or other circumstances might justify a waiver.

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3. It is ambiguous what is included in some of these categories. For example, "national security" can be interpreted broadly and can include such things as climate change (as President Obama directed the heads of the executive departments and agencies in a September 2016 memo).

Executive Order 13771 left unanswered many important questions on implementation. Two administration memos, issued on February 2, 2017, and April 5, 2017, provide further clarification about the regulatory cap (OMB, 2017a, 2017b).

The first (applicable to fiscal year 2017) states that the two-for-one requirement with full cost offset applies only to "significant regulatory actions,"[4] does not apply to transfers, is not required of independent agencies (for example, the Consumer Financial Protection Bureau, Securities and Exchange Commission, and Federal Reserve), and that new guidance or interpretative documents will be evaluated on a case-by-case basis to determine if they are subject to the requirements. The first memo requires that costs be measured as the opportunity cost to society, that future energy cost savings associated with energy efficiency regulations "in most cases" do not count as cost offsets, and that costs that occur across years be annualized in accordance with standard OMB practice. The memo states that "in general," the previously estimated costs from the original Regulatory Impact Analyses cannot be used, instead requiring "the most current information available on projected cost savings … to the extent feasible." It also allows agencies to request the OMB Director to transfer cost savings from another agency (a provision which if regularly invoked would effectively enable OMB to administer an aggregate executive branch regulatory cap). Finally, noting that the fiscal year 2017 requirements in Executive Order 13771 apply "unless otherwise required by law," the guidance allows agencies to "proceed with significant regulatory actions that need to be finalized in order to comply with an imminent statutory or judicial deadline even if they are not able to identify offsetting regulatory actions by the time of issuance."

The second memo (applicable to fiscal year 2017 and beyond) provides answers to numerous questions about the Executive Order. Notably, it indicates that regulatory actions stemming from statutes that prohibit the consideration of cost "will generally be required to offset the costs of such regulatory actions." This language seemingly represents an effort to circumvent statutory prohibitions against considering costs, and is likely to give rise to future litigation. Similarly, agencies must comply with any imminent statutory or judicially required deadlines, but are required to offset these regulatory actions "as soon as practicable thereafter."

The second memo instantiates many of the same requirements as the first: costs should be measured as the full opportunity cost to society and agencies should conform to prior practice in whether to categorize things as a benefit (which does not count in the offset) or a "negative cost." For example, future energy cost savings associated with energy efficiency regulations have typically been treated as benefits by the agencies, so should not count as cost savings when taking a 13771 deregulatory action. For costs and cost savings across years, agencies should compute present value estimates, using both a 7 and 3 percent discount rate. Agencies can bank deregulatory cost savings for future use, transfer deregulatory cost savings across the agency, and may submit a request to the OMB director for a deregulatory cost saving from another agency.

The final question of the second memo asks, "What happens if an agency is not in full compliance with the requirements of E.O. 13771 at the end of a fiscal year?" It instructs that within 30 days, the

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4. Executive Order 12866 defines "significant regulatory action" generally as any regulatory action that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

agency must submit for the OMB director's approval, a plan for coming into full compliance that addresses: (i) the reasons for, and magnitude of, non-compliance; (ii) how and when the agency will come into full compliance; and (iii) any other relevant information requested of the OMB director. Further, "OMB may recommend that an agency take additional steps to achieve compliance, such as publishing a notice in the *Federal Register* requesting ideas from the public on E.O. 13771 deregulatory actions to pursue. OMB may also request that agencies post plans approved by the [OMB] Director."

On February 24, 2017, the administration also issued Executive Order 13777, "Enforcing the Regulatory Reform Agenda." This requires each agency, within 60 days, to designate an agency official as its Regulatory Reform Officer (RRO), who will oversee the implementation of Executive Order 13771 and other regulatory reform initiatives. This order further requires each agency to establish a Regulatory Reform Task Force (which includes the RRO as a member) to, among other things, "evaluate existing regulations … and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law."

Additional guidance on Executive Order 13777, issued on April 28, 2017 (OMB, 2017c), clarifies that it only applies to agencies subject to the regulatory review requirements of Executive Order 12866 (federal agencies of the executive branch, excluding "independent regulatory agencies"), although independent agencies "are still encouraged to comply."[5] It also requires that applicable agencies, starting with the fiscal year 2019 Annual Performance Plan, include performance indicators of the number of evaluations to identify potential deregulatory actions, the number of deregulatory actions recommend by the agency's Regulatory Reform Task Force, the number of deregulatory actions issued (recommended by the task force or otherwise), and the total incremental cost of all regulatory and deregulatory actions.

Legal Challenges

The Trump administration is clearly well on its way to instituting its two-for-one and zero-net-cost policies at this point, but before its plans can actually become effective it will have to work through a number of challenges, both legal and practical. This section works through the legal difficulties, and the next section explains why announcing these policies is easier than implementing them.

Historically, most regulatory budget plans have been envisioned as legal frameworks that Congress would enact into law. If that were the case, when the executive branch followed the prescribed procedures, it would be acting pursuant to Congress's instructions and would be in a very strong legal position. Because the Trump administration's two-for-one plan and zero-net-cost budget are unilateral executive

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5. Specifically, the E.O. applies to any executive department, military department, government corporation, government-controlled corporation, or other establishment in the executive branch, excluding the Government Accountability Office, Federal Election Commission, Federal Reserve Board, Commodity Futures Trading Commission, Consumer Product Safety Commission, Federal Communications Commission, Federal Deposit Insurance Corporation, Federal Energy Regulatory Commission, Federal Housing Finance Agency, Federal Maritime Commission, Federal Trade Commission, Interstate Commerce Commission, Mine Enforcement Safety and Health Review Commission, National Labor Relations Board, Nuclear Regulatory Commission, Occupational Safety and Health Review Commission, Postal Regulatory Commission, Securities and Exchange Commission, Consumer Financial Protection Bureau, Office of Financial Research, and Office of the Comptroller of the Currency.

branch maneuvers, they are in a much more precarious legal position.[6] Courts may well be suspicious that actions taken to satisfy the executive orders are in conflict with other laws—both procedural and substantive.[7]

Procedurally, the administration must comply with the Administrative Procedure Act's (APA) requirements. Especially important is the prohibition on any "arbitrary and capricious" decisions, which was applied to deregulatory actions in the seminal case of *Motor Vehicle Manufacturers' Association v. State Farm* (1983).[8] At issue in the case was a Reagan administration decision to withdraw a Carter administration rule issued by the National Highway Traffic Safety Administration (NHTSA) requiring all new cars to be equipped with either automatic seat belts or airbags. One of the incoming Reagan administration's first actions was a direction by the President to the NHTSA Administrator to effectively rescind the rule. Although NHTSA went through the APA's standard notice-and-comment procedure, the government argued that revocation of existing rules should be held to a lower standard of review than rules initially established. A unanimous Supreme Court explicitly rejected that view, holding that revocations or rescissions must pass the same "arbitrary and capricious" test required for all new rules, and then specifically held that NHTSA's particular revocation failed that test.

The Supreme Court's ruling in this case makes it virtually certain that the two-for-one requirement will require notice-and-comment procedures to be observed for the rules targeted for elimination. In other words, the administration cannot simply rescind existing rules at the moment it wants to promulgate a new rule, but must *propose* the elimination of two rules for each new *proposed* rule. Since some of the proposals to eliminate rules will undoubtedly invite legal challenges, there will be considerable uncertainty as to whether those rules really will end up being wiped from the *Code of Federal Regulations*. Any approach that attempted to bypass notice-and-comment procedures would likely run afoul of the APA, leading to defeats in courts and likely political backlash as well. Even when standard procedures are observed, there is no guarantee that attempts to roll back regulatory requirements will pass APA muster. Under *State Farm*, the administration will need to create an evidentiary record justifying any shift in policy rather than merely asserting that the relevant agency possesses the authority to reinterpret the statute at issue.

So far, it appears that the Trump administration is taking these APA requirements quite seriously. Rather than simply declaring Obama administration rules targeted for deregulation to be dead letters,

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6. Representative Mark Meadows (R-NC) recently introduced a bill (H.R. 2623) that would codify the two-for-one and regulatory budget requirements, as well as the implementation responsibilities of the Regulatory Reform Officers and Regulatory Reform Task Forces. Congressional passage of this bill (which seems unl kely any time soon) would remove some of the legal uncertainties over the Executive Order, though courts might still be required to sort out which statutory language prevails, that of this bill or the underlying regulatory statute.

7. The administration has already faced legal obstacles in delaying implementation of Obama-era rules, with the U.S. Court of Appeals for the District of Columbia Circuit ruling that the EPA must enforce the Obama administration's rule on methane emissions from oil and gas drilling and the subsequent reversal by the EPA of its plans to delay for one year the implementation of the Obama administration's ozone standards.

8. Chief Justice William Rehnquist, joined by three other justices, filed a separate concurring opinion, with a partial dissent. One of the coauthors of this paper (Litan) began his legal career in large measure as an associate attorney at the law firm representing State Farm, and worked on this litigation through the appellate court stage (he had joined another law firm before the case went to the Supreme Court). One of the other associates working on the matter at the time with Litan and others at the law firm was Merrick Garland, now the chief judge of the U.S. Court of Appeals for the D.C. Circuit.

they have couched their approach to these rules as initiated *reviews*, ostensibly without predetermined destinations. Rules targeted by these reviews include the Department of Labor's controversial and highly publicized "fiduciary rule" governing providers of retirement plan services (mutual funds and variable annuity products), whose effective date was delayed, but which the Secretary of Labor Alexander Acosta (2017) ultimately affirmed would be enforced while a full review took place; and the EPA's Clean Power Plan and other rules aimed at curbing carbon dioxide emissions to slow climate change. (The administration finally formally proposed rescinding the Clean Power Plan in October 2017, citing the rule's legal impermissibility as its main justification.) In each of these cases, the administration announced its intention to overturn these Obama rules, without technically doing so. Most readers, or even politicians in either party, are unlikely to read or put much emphasis on this last qualifier, but it is legally very important: reversal or change of an existing rule requires a new proposal, notice and comment under the APA, and a justification that the elimination or modification is not "arbitrary and capricious."

In any event, the Trump administration's regulatory actions to date—and possibly more similar announcements—will inevitably invite legal challenges, just as Reagan's reversal of the "airbag rule" was challenged in the early 1980s. Challengers to the replacements (or rescissions) of some rules will seek to strengthen their cases that the deregulatory actions ought to be seen as "arbitrary and capricious" by pointing out that the versions finalized by the Obama administration were blessed by federal appellate courts as consistent with the APA's requirements. This is the case for both the fiduciary rule and the controversial "net neutrality" rule issued by the Federal Communications Commission.[9] In both these cases, federal appellate courts already have upheld the rules against challenge (although at this writing, challengers to the fiduciary rule are still appealing a lower court ruling supporting the rule). Changes to these existing rules, if not ordered by fresh congressional enactments (unlikely to be forthcoming given Senate Democrats' willingness to filibuster), will need to be made on some basis that courts will find non-arbitrary. This is not impossible—courts are generally deferential to the statutory interpretations of executive branch agencies, so long as they can be justified. The administration may have new evidence regarding costs and benefits of the rules since they have gone into effect or were finalized, and there is no reason to think that there is only one non-arbitrary interpretation of most statutory requirements. Nonetheless, the arbitrary and capricious standard could represent a significant obstacle for the administration to overcome before policy changes can be effected with certainty.

It is worth noting at this point that the broad regulatory reform that currently has the strongest chance of passing Congress, the Regulatory Accountability Act (RAA), would significantly heighten the level of scrutiny agencies could expect to face in promulgating new rules and make it easier for outside groups to sue if they believed an agency mishandled some part of its benefit-cost analysis. While the ostensible goal of the RAA is to discipline new rulemaking, the greater level of scrutiny will also make it more legally difficult to rescind existing rules. Although much would depend on the particular language of whatever version of the RAA managed to secure passage (still very far from a sure thing), it is entirely possible that the RAA would thus make the Trump administration's deregulatory task more legally complicated.

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9. The latter rule subjects Internet Service Providers to regulation as "common carriers" under Title II of the Communications Act of 1934, and was issued by an independent agency, which is not covered by the president's executive order (nor could it be legally). But President Trump's FCC chair Ajit Pai has signaled his opposition to the current net neutrality rule. See Brodkin (2017).

The two-for-one deregulation requirement faces legal limits beyond the procedural obstacles. Laws require executive actions—often explicitly in the form of rulemakings—to implement statutory goals, with varying degrees of clarity. The president is constitutionally obligated to "take care that the laws be faithfully executed"—which means that he cannot disregard legal requirements without breaking his oath of office. Many deregulatory options that would be attractive to the administration on policy grounds are thus legally barred, since they remain mandated by law.

To give a brief example, consider the controversial Volcker Rule, which bars U.S. banks from proprietary trading. Although many would like to wipe the Volcker Rule off the books, section 619 of the Dodd-Frank Act requires its promulgation. Without some congressional amendment, this particular rule can only be replaced, not rescinded. Thousands of far less eye-catching statutory requirements are scattered throughout the *U.S. Code*, and the Trump administration must continue to respect these as it searches for deregulatory targets.

Practical Challenges to Instituting a Regulatory Budget

The legal challenges just described are considerable, but, on the whole, probably manageable given careful attention to the law. Some of the *practical* difficulties facing the Trump administration's regulatory budgeting, on the other hand, are fundamentally insoluble: they represent serious tradeoffs without clear right answers. How the administration resolves these practical problems nevertheless will define the potential for good and ill of its regulatory budgeting efforts; since many questions are apparently still unresolved, they deserve careful consideration.

The most fundamental question for any regulatory budget is how to measure costs. As a generalization, the more a measure gets at what we care about, the harder it is to measure cheaply, accurately, and with certainty. For example, measuring costs as pages of regulation is trivially easy to do, and one could imagine simply requiring that every new page of requirements be offset by the deletion of one page from the existing *Code of Federal Regulations*—but everyone with any knowledge of how regulations are written would agree that this would be a senseless exercise that fails to get at true social costs. Measuring the number of specific regulatory requirements or actions would be somewhat more meaningful; direct compliance and administrative costs more meaningful still; and best, but most difficult to measure, would be measuring the true opportunity cost of a regulation for society as a whole (Peacock, 2016).

According to its February 2017 guidance, the Trump administration will opt for the most difficult of these measures, opportunity cost. But that choice, and its reference to OMB Circular A-4, hardly ends the discussion. The Circular—a document defining internal OMB policies about how to measure costs for regulatory analyses—identifies opportunity cost with "willingness-to-pay" or "willingness-to-accept" or some combination of these concepts, but in no way definitively pins down the methodological choices needed to implement a system of estimating opportunity costs. The focus of Circular A-4 is on prospective new regulations, and thus may require updating to provide clear guidance on how to evaluate costs of existing regulations, subject to varying levels of available retrospective data. The greater complexity of opportunity cost estimates relative to the simpler (albeit less meaningful) alternative cost measures, could

lead to more imprecision, inconsistency, and misuse by the agencies in their efforts to fulfill their regulatory budget requirements. To mitigate this potential problem, OMB will need to develop a very detailed methodological guide that addresses such difficult questions as the treatment of indirect costs, which often requires estimating elasticities of supply and demand or risk aversion (Malyshev, 2010, pp. 72–73); whether effective transfers should be treated as costs or not; and whether there should ever be an inclusion of "negative costs," or whether this impermissibly strays into the realm of including benefits. How these thorny questions are resolved may, in the end, be less important than whether they are resolved decisively and clearly in the early stages of the regulatory budgeting experiment. If the administration fails to provide a clear set of guidelines early on, the whole exercise may be bogged down in endless accounting controversies that detract from agencies' ability to focus on substantive policymaking, whether regulatory or deregulatory.

Even supposing that the administration does furnish a relatively clear set of rules for estimating costs, the workload of doing so will be quite significant. This is especially the case because of OMB's instruction that agencies should not generally just dust off ex ante cost estimates previously conducted as part of the original rulemaking, but should instead do new cost estimates informed by evidence as to costs in practice. Some agencies may be able to cope better than others with this new burden, perhaps because their designated Regulatory Reform Officers have economics backgrounds of the sort necessary to conduct cost estimates. In any case, OMB should be attentive to the ways in which it could best farm out its analytic capabilities to agencies working to comply with the regulatory budget to facilitate speedy compliance. If it finds that there is an overall lack of capacity, it should appeal to Congress to increase the resources available, either to fund more analyst positions or to engage outside contractors *without conflicts* to provide these estimates.

OMB will also need to make some crucial choices about the timing and summing of costs incurred and costs saved. First, there is the choice of whether the zero-net-cost target is to be a global goal or whether each agency will have to achieve it individually. As discussed earlier, it appears the administration favors the latter approach, although allowing the possibility of some interagency cost transfers. If an agency successfully engages in major deregulation, it may have cost savings to spare, and it will be interesting to see whether those are allowed to be transferred to another agency as a way to manage its difficulties making budget. (OMB guidance also allows regulatory actions overturned by Congress—such as disapprovals of rules under the Congressional Review Act—to count as deregulatory actions for an agency's regulatory budget.)

Second, there is the question of when savings must happen, and whether they must be strictly contemporaneous with costs incurred. Agencies could be given maximum flexibility if they were allowed to "bank" cost savings eligible to be spent at any needed future time, or they could be required to align decisions about new regulatory costs and saved regulatory costs at a single moment of action. The latter might encourage shoddy, hurried estimates, whereas the former would give the agencies greater flexibility in applying the deregulatory offsets and allow them to build up inventories of cost savings. Current OMB guidelines only allow agencies to bank savings for the current and subsequent fiscal year.

Finally, there is the question of scope: just what kinds of agency actions are to be encompassed by this regulatory budgeting process? Saying "everything, but with some exemptions" just reframes the question: in what context will agency actions be exempt? Potential candidates include non-significant regulations (announced as exempt), non-rulemaking actions such as guidances (announced as non-exempt), actions from independent agencies (announced as exempt), rulemakings clearly fulfilling outstanding statutory or judicial obligations ("may qualify" as exempt), actions necessary to fulfilling international commitments

(unclear on whether exempt), and actions responding to civil emergencies ("may qualify" as exempt). Even if the exemptions do not overshadow the rule, there will be a danger that agency actors will see regulatory budgeting as a burden to be avoided by gaming exceptions when possible. Again, this puts a premium on up-front clarity.

Conclusion: Worst and Best Case Scenarios

It is fair to say that the Trump administration has launched the most ambitious regulatory budgeting program in human history—just a tremendous undertaking. Whereas Canada and the United Kingdom have managed to get their programs up and running with some success thanks to relying on relatively simple metrics of cost, in the United States the regulatory budget will attempt to get much closer to real social costs, at the expense of adding considerable complexity. That makes it potentially more meaningful and deep reaching, but also more likely to bog down and create a massive bureaucratic headache to go with those that already exist.

That makes the disappointing scenarios for the regulatory budget rather plausible, but not inevitable: that it will become not an engine for reform, but instead will provide a blunt instrument that either obstructs new regulations (irrespective of whether or not they are welfare-enhancing) or leads to new regulations coupled with haphazard cutting of existing regulations (again, failing to distinguish between the those that do and do not enhance social welfare).[10]

The former, which essentially means creating a giant bureaucratic headache for regulators, may sound downright lovely to a certain kind of libertarian who thinks that whatever is bad for the government must be good for everyone else. But if all that the Trump administration's regulatory budget turns out to be is an elaborate moratorium on new actions, that would represent a missed opportunity for would-be deregulators. The whole purpose of instituting a forcing mechanism is to confront the problem of accumulated and outdated regulatory requirements that burden U.S. businesses, thereby freeing Americans' energies for productive purposes and unleashing economic growth. If this administration's initiative ends up being nothing more than a pause in further accumulation—of both good and bad prospective regulations—it would stand as a harsh judgment on the likelihood that existing regulation would ever be seriously reformed.

Similarly, it will be a missed opportunity (although perhaps a less bad scenario than the one just noted) if Trump's regulatory budget efforts simply usher in a period of haphazard cutting in which important regulatory protections are abandoned simply to make the budgeting work out. There may well be a natural bias toward overregulation—and a regulatory budget may be a good way to counter that

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10. It is also poss ble that, notwithstanding the ambitions of the Trump administration's regulatory reforms, they could turn out to be rather inconsequential. One scenario, predicted by Belton, Krutilla, and Graham (2017), is that the two-for-one will be largely non-binding because the Trump administration will simply avoid proposing many new significant regulations that would trigger the requirement. Another possibility is that the procedures will never actually be observed. As of the end of FY2017, just a few rules have identified themselves as affected by E.O. 13771, with the vast majority of citations to the order noting why proposed rules are exempt (Bolen, 2017). This has led some observers to wonder if the potential legal headaches of the order (including a pending challenge brought by Public Citizen and others) will lead agencies to just avoid complying with it and OMB to avoid any kind of internal enforcement. Neither of these possibilities seems likely to us, however.

bias—but it does not follow that every regulation deserves equal scorn as a "job killer," nor even that those regulations with the highest gross costs ought to be regarded with the most suspicion. The regulatory budget should work to focus our minds on the tradeoffs inherent in constraining private market behavior, not to give us cover for pretending that bigger cuts are necessarily better.

Expressing these concerns points us toward what should be considered the best-case scenario for the regulatory budget: that it will serve as an effective means of harnessing energy toward modernizing and streamlining regulation in a virtuous cycle involving both bureaucrats and regulated firms, which are the two groups with the most intimate knowledge of how the regulatory state actually functions. The promise of regulatory budgeting is that it asks both groups to furnish concrete, "scorable" ideas for cost savings that can be readily implemented in ways consistent with the law—and in fact says that if we cannot come up with these in practice, then new regulation must grind to a halt. If no ideas are forthcoming—if it turns out that the most that can be said about the economic burdens of regulation is that some people like to lodge more or less aesthetic complaints about them—then regulatory budgeting will fail. But if, as seems more likely, there are lots of opportunities to bring old regulations up to date with modern realities, and plenty of accumulated detritus to clear out, then the regulatory budget offers a much needed spur to action. It is up to the administration to carefully work this system out and realize this best-case scenario.

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